

IN THE
CONSISTORY COURT

OF
L O N D O N.

A U G U S T A E V A N S, the Wife,

VERSUS
T H O M A S E V A N S, Esq. the Husband.

S E N T E N C E

G I V E N B Y
S I R W I L L I A M S C O T T,

J U L Y 2, 1790.

TAKEN IN SHORT HAND BY MR. GURNEY.

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107.



SEN T E N C E

G I V E N B Y

S I R W I L L I A M S C O T T,

J U L Y 2, 1790.

THIS cause has been carefully instructed with evidence by the practisers, who have had the conduct of it; and has been very elaborately argued by the counsel on both sides. It now devolves upon me to pronounce the legal result of the evidence, which has been thus collected; and of the arguments raised upon that evidence: a duty heavy in itself, from the quantity and the weight of the matter; and extremely painful, from the nature and tendency of a great part of it; and from the inefficacy of this court to give relief adequate to the wishes of both parties. Heavy and painful as it is, it is a duty which *must* be discharged; and which can only be discharged with satisfaction under a consciousness, that it is discharged with attention and impartiality; and under the reflection, that if, after the endeavours, which I have used in cleansing and in instructing my own conscience upon the subject, I should have taken what may be deemed an undue impression of the case; the laws of this country have not been deficient in providing

a mode by which the parties may be relieved against the infirmities of my judgment.

The humanity of the court has been loudly and repeatedly invoked. Humanity is the second virtue of courts; but undoubtedly the first is justice. If it were a question of humanity simply, and of humanity which confined its views merely to the happiness of the present parties, it would be a question easily decided upon first impressions. Every body must feel a wish to sever those who wish to live separate from each other, who cannot live together with any degree of harmony, and consequently with any degree of happiness; but my situation does not allow me to indulge the feelings, much less the first feelings of an individual. The law has said that married persons shall not be *legally* separated upon the mere disinclination of one or both to cohabit together. The disinclination must be founded upon reasons which the law approves, and it is my duty to see whether those reasons exist in the present case.

To vindicate the policy of the law is no necessary part of the office of a judge; but if it were, it would not be difficult to shew that the law in this respect has acted with its usual wisdom and humanity; with that true wisdom, and that real humanity, that regards the general interests of mankind. For though in particular cases the repugnance of the law to dissolve the obligations of matrimonial cohabitation may operate with great severity upon individuals; yet

yet it must be carefully remembered, that the general happiness of the married life is secured by its indissolubility. When people understand that they *must* live together except for a very few reasons known to the law; they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties which it imposes. If it were once understood, that upon mutual disgust married persons might be legally separated; many couples, who now pass through the world with mutual comfort, with attention to their common offspring and to the moral order of civil society, might have been at this moment living in a state of mutual unkindness; in a state of estrangement from their common offspring; and in a state of the most licentious and unreserved immorality. In this case, as in many others, the happiness of some individuals must be sacrificed to the greater and more general good.

That the duty of cohabitation is released by the cruelty of one of the parties is admitted, but the question occurs, *What is cruelty?* In the present case it is hardly necessary for me to define it; because the facts here complained of are such, as fall within the most restricted definition of cruelty; they affect not only the comfort, but they affect the health, and even the life of the party. I shall therefore decline the task of laying down a direct definition. This however must be understood, that it is the duty of courts, and

and consequently the inclination of courts, to keep the rule extremely strict. The causes must be grave and weighty, and such as shew an absolute impossibility that the duties of the married life can be discharged. In a state of personal danger no duties can be discharged ; for the duty of self-preservation must take place before the duties of marriage, which are secondary both in commencement and in obligation ; but what falls short of this is with great caution to be admitted. The rule of *per quod consortium amittitur* is but an inadequate test, for it still remains to be enquired, what conduct ought to produce that effect ? whether the *consortium* is reasonably lost ? and whether the party quitting has not too hastily abandoned the *consortium* ? What merely wounds the mental feelings is in few cases to be admitted, where they are not accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional fallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty : they are high moral offences in the marriage-state undoubtedly, not innocent surely in any state of life ; but still they are not that cruelty against which the law can relieve. Under such misconduct of either of the parties (for it may exist on the one side as well as on the other) the suffering party must bear in some degree the consequences of an injudicious connection ; must subdue by decent resistance or by prudent conciliation, and if they cannot, they must suffer in silence. And if it be complained that by this inactivity of the courts

much injustice may be suffered and much misery produced, the answer is, that courts of justice do not pretend to furnish cures for all the miseries of human life. They redress or punish gross violations of duty; but they go no farther; they cannot make men virtuous: and, as the happiness of the world depends upon its virtue, there may be much unhappiness in it which human laws cannot undertake to remove.

Still less is it cruelty, where it wounds not the natural feelings, but the acquired feelings arising from particular rank and situation; for the court has no scale of sensibilities by which it can gauge the quantum of injury done and felt; and therefore, though the court will not absolutely exclude considerations of that sort, where they are stated merely as matter of aggravation; yet they cannot constitute cruelty where it would not otherwise have existed: of course, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number amongst its necessaries, is not cruelty. It may to be sure be a harsh thing to refuse the use of a carriage, or the use of a servant; it may in many cases be extremely unhandsome, extremely disgraceful to the character of the husband; but the ecclesiastical court does not look to such matters: the great ends of marriage may very well be carried on without them; and if people will quarrel about such matters (and which they certainly may do in many cases with a great deal of acrimony and sometimes with much reason) they yet must decide such matters as well as they can in their own domestic *forum*.

These

These are negative descriptions of cruelty ; they shew only what is *not* cruelty, and are yet perhaps the safest definitions which can be given under the infinite variety of possible cases that may come before the court ; but if it were at all necessary to lay down an affirmative rule, I take it that the rule cited by Dr. Bever from Clarke, and the other books of practice, is a good general outline of the canon law, the law of this country, upon this subject. In the older cases of this sort, which I have had an opportunity of looking into, I have observed that the danger of life, limb, or health, is usually inserted as the ground upon which the court has proceeded to a separation. This doctrine has been repeatedly applied by the court in the cases that have been cited. The court has never been driven off this ground. It has been always jealous of the inconvenience of departing from it, and I have heard no one case cited in which the court has granted a divorce without proof given of a *reasonable apprehension* of bodily hurt. I say an *apprehension*, because assuredly the court is not to wait till the hurt is actually done ; but the apprehension must be *reasonable* ; it must not be an apprehension arising merely from an exquisite and diseased sensibility of mind : petty vexations applied to such a constitution of mind may certainly in time wear out the animal machine, but still they are not cases of legal relief ; people must relieve themselves as well as they can by prudent resistance ; by calling in the succours of religion and the consolation of friends ; but the aid of courts is not to be resorted to in such cases with any effect.

The

The parties in this case are a Mr. and Mrs. Evans, proceeding in a cause of cruelty brought by Mrs. Evans against her husband.

The libel states the marriage at Calcutta, in the East Indies, in the year 1778 ; and it proceeds to plead the character of the parties ; *that he is a person morose, sullen, tyrannical*, and so on ; and that *she is in every respect the reverse, a woman of a mild and tender disposition*. These pictures are reversed, as is the usual manner, in the responsive allegation. It is usual, in these sorts of causes, to admit articles pleading in this manner the characters of the respective parties ; it is usual, I say, to *admit* such articles, but I have not understood that it is usual to examine upon them, or at least to examine upon them in the proportion which has been done in the present cause : and I think that I feel the weight of some reasons which would induce me very much to question the propriety of *admitting* such articles at all, if they were likely in other cases to lead to the consequences they have done in this ; for a very great part of this voluminous enquiry has turned, not upon the matter in issue in the present cause, but upon the general character of the two parties ; and I have been loudly called upon on both sides to determine, that which I am not called upon, either by the nature of the authority which I possess, or by the necessity of the present case, to pronounce, viz. the result of that evidence upon general character.

Upon evidence of this kind it is impossible not to remark, that it is unsatisfactory in the extreme ; it is *opinion* at best ;

the opinion of persons whose powers of judging upon any question of delicacy and importance are utterly unknown to me; whose partialities and prejudices, to colour and influence those opinions, are equally unknown to me. To take such opinions then, and to apply them to the proof of *controverted facts*, and those facts too of a criminal nature, does seem to be extremely unsafe. The case indeed is *civil*, as has been repeatedly observed, but the facts undoubtedly are criminal; or else why plead the bad disposition of the husband? why plead it, except for the purpose of shewing that he has committed bad acts? Now I know hardly any case in which it is allowed to create a presumption in favor of the probability of criminal facts having been done, where that presumption is founded upon the mere opinions of men concerning general disposition. Criminal facts must be tried by themselves. To try them by opinions, and by opinions collected in this sort of way, is extremely dangerous for the court: to the individual, who is exposed to an enquiry of this kind, it is dangerous in the extreme: to place a man in this sort of legal pillory, where all who choose may pelt at him, is exposing an individual to the injustice of mankind, in such a way, as I am sure the justice of courts cannot relieve him from.

What I have to say upon this part of the case therefore will be extremely short, because it is merely a digression for the satisfaction of the parties; it is no foundation; no principle; no part of that legal proof upon which I shall determine this case.

And

And I must here take the opportunity of saying, that if the truth of this charge rested upon matter of character alone, it would determine me very favorably in behalf of Mr. Evans. Here are the attestations of a great number of persons; gentlemen extremely respectable in their own characters and situations; connected with him by early and familiar acquaintance; by habits of a long intercourse; by habits of business. But all this, it is said, is the *partiality of friends*. What, is it nothing in a man's favor to have friends? Can a man say any thing that bears more strongly in his favor, than that he has friends? partial friends? friends who have become so, and can have become so, from the opinion only of his good deservings? They are persons, many of them, who have lived with him in a distant country, where countrymen collect together in close and intimate connection; *where they form* (as one of the witnesses describes it) *one community*: some of them, two of them in particular, have lived with him in the same family; in the family of Mr. Hastings: they have been connected with him in the conduct of business, where his temper was daily seen and daily tried; for business, as we all know, is very apt to expose the real dispositions of men: it is a tyrannical master, and if a man can go through the difficulties which even the smoothest course of business will throw in his way, with an unruffled temper, it is no mean argument of a tractable disposition.

All this, it is said, may be very true; but it has happened in other cases, that a man has worn a mask to the public,

lic, and pulled it off to his family. Undoubtedly there may have been such cases; cases of moral prodigies; cases of disgraceful exception to the ordinary course of nature; but the general presumption at least is strong the other way. If a man shews upon all occasions an obliging disposition in his general intercourse with the world; the presumption certainly is, that he carries that disposition with him into the private recesses of his life. If he is a good friend, the probability is, that he is a good husband, which is a friend only of a nearer and dearer nature. It is to be added too, that in this case almost all the witnesses speak to this very specific part of Mr. Evans's character; even the witnesses who are examined on the part of Mrs. Evans. There are particularly Mr. Wood, Dr. Curry, Tomlings (with the exception of one fact) Mr. Paumier, Mr. Griffiths, Mr. Boehm, Mrs. Webber (with the exception of one fact likewise); all these witnesses, who are examined on the part of Mrs. Evans, bear an honorable testimony to his general and visible conduct.

Well, but it is said, there are witnesses who depose in a contrary manner, and you cannot reconcile these two sets of witnesses together, but upon the supposition that what is said by the first set of witnesses is the effect of mere hypocritical assumption. Now the other witnesses who depose unfavorably (with the exception of Mrs. Hartle, and a young French woman, Madame Bobillier, whom I shall speak of by and by) are Mr. and Mrs. Thackeray, and Mr. Moore. Mrs. Moore has not been examined in this cause, and the reason given for that has been, that she being the

sister

sister of the party, might be a witness whom the court would hear with a great deal of jealousy and suspicion. Why, most assuredly the same circumstances of jealousy hang upon the characters of every one of these witnesses : they are all persons nearly allied ; are subject of course to prejudice : I don't say to a dishonest or dishonorable prejudice, but from that circumstance they are subject to prejudice.

There is another observation that strikes me, and that is this, That all these witnesses (with the single exception of Mr. Moore) found their opinions upon the very facts controverted in the cause. Mr. Thackeray, who has given a very candid testimony in the cause, and on whom I shall very much rely in the determination of it, says expressly, "*that till some time after Mr. Evans's return to England he had always a good opinion of him,*" and he expressly founds his present opinion upon the facts that are now in issue between the parties. Why, then, only consider what is done in this case. In the first place, the witnesses extract their opinions from these particular facts, and then it is expected that the court shall take those opinions and apply them to the establishment of the very facts in question. To be sure, if there is such a thing as circularity in argument, this is that ; and grosser injustice than that could not be committed. Mr. Moore, indeed, stands upon a very different footing, he goes back to a remoter opinion ; his opinion does not arise out of the facts in issue ; he refers to a much earlier period of time. Now there are one or two observations,

tions, which strike me pretty forcibly upon the testimony of Mr. Moore. Mr. Moore is a man of sense, he knows, I dare say, extremely well, that caution and that sobriety of mind which belongs to a witness deposing in a court of justice to the character of another individual. And I am very sure he does not come here to amuse himself or the court with drawing highly-finished pictures; I am therefore to suppose, as I do, that Mr. Moore is not only perfectly sincere, but that he rather falls short than exaggerates the impression upon his mind, in the character which he gives of this gentleman; but that character is this, "That he became intimately acquainted with Mr. Evans, " and was a good deal in his company, and saw much of him, " prior to his marriage; that after his marriage, until the " month of April 1780, their families visited; but from the " said month until the arrival of Mr. Evans in England, he " had little or no intercourse with him; but that upon his said " arrival, and for some time afterwards, he the deponent often " saw and was a good deal in his company; and has at differ- " ent periods prior to his marriage, when he was likely to be- " come allied to the deponent's family, and until Mrs. Evans " was obliged to quit his house, given a watching and scruti- " nizing eye over his conduct and disposition, and is thereby " enabled to say, that he knows him to be a man of wicked, " profligate, and abandoned principles, and of a morose, ty- " rannical, cruel, and savage disposition, void of common hu- " manity, vindictive, full of animosity and revenge, of a " turbulent and intolerable temper, avaricious and mean to " excess, a great dissembler and hypocrite, filthy in his ideas, " and

" and delighting in the dirty expression of them; and so much
 " given to deceit, scandal, and falsehood, that, from a very early
 " period after his aforesaid marriage, it was a rule in the de-
 " ponent's family never to believe what he said; and that he,
 " the deponent, has often heard him scoff at the religion of the
 " church to which he was brought up or professed; that he
 " has often heard him pride himself on his apathy and callous-
 " ness, and knows him to be of callous feelings; and that he
 " had the character of a morose, tyrannical, cruel master
 " amongst his native servants in India." And he concludes
 by pronouncing him, in another passage of his deposition,
 a person unfit for admission into society.

Now taking this character into consideration, these circumstances do seem to me to be a little extraordinary. This young lady went over to India into the family and under the protection of Mr. Moore; Mr. Moore was acting by her with the substituted authority of a parent; he was perfectly acquainted with the detestable character of this gentleman; it is a courtship which goes on for many months (that is proved by Mr. Moore himself) and yet it does happen that this poor young creature is suffered to fall into the hands of this monster. The marriage is graced by the presence of Mr. Moore, by the presence of some of the most respectable persons then resident in the country, Mr. Vansittart, Mr. Perring, Sir John D'Oyly; an afflicting ceremony it undoubtedly must have been to Mr. Moore; it must, in fact, I am sure, have been considered by him literally as leading her to the altar to be sacrificed.

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It may be said, indeed, that this was an act of necessity on his part. Be it so. This however might have been expected from a brother's affection and attention (for a brother he certainly has shewn himself throughout this business) that he would at least have taken the most early opportunities of acquainting the other parts of his family with this great misfortune which had happened to it ; Mr. Thackeray, Mrs. Thackeray, and every member of the family in England, must have been informed by him, if it was only for the security of this poor unhappy young woman, who was so sacrificed, that she was in the hands of one of the most detestable of mankind. Yet nothing is more clear to me than that nothing of this sort ever was communicated, otherwise Mr. Thackeray could not have deposed that he continued *his good opinion of Mr. Evans till after his arrival in England*. It is impossible, therefore, that it could have been communicated to Mr. Thackeray, or in short to any one of the family. I think, therefore, I have, in this case, Mr. Moore's deposition speaking one way, and Mr. Moore's conduct speaking another ; and, where they speak different ways, I know which I have to trust to. I have only one way of conceiving the matter, and that is this ; his present opinion is sincere, but it is only his present opinion ; he has not cautiously watched the rise of it in his mind ; he is inaccurate in tracing back its commencement to the period that he does : it is not, as he supposes, the fruit of early and dispassionate observation ; it is the fruit of passion, of modern passion, produced by the resentments excited by the later dissensions in this family.

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Upon the whole, then, I see most honorable attestations to the character of Mr. Evans ; and I think I have reason to presume, that if late dissensions had not happened, I should have seen no attestations but such as were perfectly honorable to his character.

On the character of Mrs. Evans, I shall say much less, for this reason ; because it is much less connected with the issue in the cause ; because, if the facts imputed to Mr. Evans are false, there is an end of the question : on the contrary, if they are true, they are of that nature and species, that they cannot be justified by any misconduct on the part of Mrs. Evans ; for though misconduct may authorize a husband in restraining a wife of her personal liberty, yet no misconduct of hers could authorize him in occasioning a premature delivery, or refusing her the use of common air. In every view therefore of the matter, Mrs. Evans's character has nothing to do with the cause ; and in a cause where so much is to be said upon the necessary parts, I shall waste but few words upon such as are unnecessary and altogether impertinent to the cause. The little that I have to say, is for the satisfaction of the parties ; and it is this, that here again, if the matter rested simply upon the evidence given of character, yet after all the unhappy pains which have been taken to blacken each other ; I see no reason why these two persons might not have passed through the world comfortably together, with a little discretion and management on their own side, and some discretion and management on the part of those who are mutually connected with

them. To be sure, if people come together in marriage with the extravagant expectations that all are to be halcyon days; the husband conceiving that all is to be authority with him; and the wife, that all is to be accommodation to her; every body sees how that must end: but if they come together with the reflection, that, not bringing perfection in themselves, they have no right to expect it on the other side; that having respectively many infirmities of their own to be overlooked, they must overlook the infirmities of each other; then, if friends will be discreet enough to support them in the execution of their duty, there is a high probability that something like happiness might be produced.

With respect to Mrs. Evans, there are many attestations much too honorable to be applied to any character that was unamiable, and these too come from witnesses examined for Mr. Evans. What bears a contrary aspect, seems to have come at a later period, when dissensions had arisen, when servants and friends had entered into the factions of the family, had taken sides, and had, of course, a bias hung upon their judgments. But what I principally rest upon, is the testimony of early acquaintance; of acquaintance before hostilities commenced; of Mr. Hannay, Mr. Maxwell, Mr. Halhed, and others. Such persons, I think, must form a safer judgment than Mr. Mason; much of whose judgment, in all probability, is formed upon the complaints of the husband. I think the attachment of her family, the zealous and animated part which they have taken

taken in her behalf on this occasion, speaks strongly in her favour; and I do assent to the observation that has been made, that if she had been the worthless person she is represented, they would not have stood forward in the manner they have done.

There is one odious imputation in the cause, which I have heard with great pain, and to which I advert with great reluctance, and it is merely for the purpose of saying, that I think it an imputation unfounded and ill advised; and I can never give way to it upon the evidence that has been given. The appearances of a woman affected by nervous disorders, in a way in which this poor lady, it is in proof, was often affected, are equivocal enough to mislead a stranger, as Mr. Mason appears very much to have been; and as to the servant, Fraser, *the facts* themselves are so trifling to which he speaks, that they *amount to little*; and when I reflect upon the licence of observation exercised by people of this kind upon the conduct of their masters and mistresses, I must consider it as amounting to nothing. I have then no evidence before me on which it is possible to suppose that the character of this lady is at all polluted by so degrading a habit.

So much, then, for matter of character in this cause; which part of it I now gladly leave to come to the real subject of the cause—the conduct of Mr. Evans towards his wife;—and, in order to examine that, I must look back a little into their history.

Mr. Evans went to the East Indies, I think, in the year 1770;—he was employed in the usual occupation of gentlemen who resort to that country; in making, or improving, his fortune.—He was in the immediate service of Mr. Hastings, the then governor general. In 1776, Miss Webb, the daughter of a respectable person in his majesty's military service, went over to Calcutta, upon a visit to two sisters who were married and resident there; a Mrs. Moore and a Mrs. Thackeray. It appears, I think, that Mr. Thackeray and his wife were at this time resident with Mr. Moore, but that they left Calcutta before Miss Webb was settled in marriage. In November, 1778, the marriage took place, after a courtship of some months, as I have already stated. At the time of the marriage, he made a settlement upon her, to which Sir John D'Oyly was a trustee; and Mr. Boehm, his agent in England, speaks to his belief, that this was a settlement to her sole and separate use. Mrs. Evans appears to have been of a delicate constitution, and the climate of India by no means agreed with her. It is proved by Sir John D'Oyly that she was often in fits in a very early period of the marriage; that is what he expressly swears. Mr. Maxwell proves, that when she pressed a return to England upon her husband, it was stated that the climate of India did not agree with her. In other respects I see no reason to presume that the marriage was not as productive of mutual happiness as marriages usually are.—Sir John D'Oyly swears expressly that she *at that time appeared very fond of him*; Mr. Griffiths, Mr. Wood, and several other witnesses who are

are examined as to the character and conduct of the parties, and who lived in considerable habits of intimacy with them at that time, give me no reason whatever to suspect that any thing like unhappiness then subsisted between them: and all the witnesses, I think, who depose to that period, speak with as little apprehension as to what has since happened, as is possible.

In 1781, Mrs. Evans left India on account of her health. Mr. Evans's counsel have taken credit on account of his acquiescence in this separation. Now, this credit is denied, upon the ground that this acquiescence might have been merely for the purpose of getting rid of her. Why, to be sure, if his preceding conduct had been that of a disaffected husband, such a construction might have been fair enough; but if otherwise, it is rather hard to give such an interpretation to the very step which the most affectionate husband must have taken. Credit is taken likewise, by the counsel on behalf of Mr. Evans, that no cruelty is imputed to Mr. Evans at this time. It is answered, that though no cruelty is proved, yet there might have been acts of cruelty, which the prudence of the party, and a just regard to time and expence, have prevented her from now bringing forwards. It is within my recollection (and if it had not, I have been reminded of it) that in the original allegation given in this cause, she expressly pleaded, *that her original return to Europe was occasioned by his cruelty.* —That assertion I directed to be struck out, because it was pleaded in a way so loose as to be incapable of proof; and

and therefore shewed that the party herself could have had no intention of proving it. It satisfies me, then, of this, that there was no disposition to suppress it, if it had been maintainable; because it is actually noticed in the cause. Taking then the whole together, I am supported by the testimony of all the witnesses; and I think I am also supported by what is full as good evidence, by Mrs. Evans's conduct in this suit, in saying, that no cruelty is at this period of time, *viz.* her first departure for Europe, imputable to Mr. Evans.

She arrived in England in October, 1781. She pursued the means of health; by medical advice; by travelling to different parts of Europe; by proper amusement; in all of which it is not denied; on the contrary, it is fully admitted, that she enjoyed the most liberal assistance from the fortune of Mr. Evans. It is proved by his agent, Mr. Boehm, that the expence, during her residence in England, amounted to about £. 5600, which, by a calculation rather, I think, unfavorable, has been made to amount to near £. 2000 a year. This certainly is a large sum out of a fortune that was making, that was not yet made;—it was in fact so large as to alarm the friends of Mr. Evans; and Mr. Boehm took a liberty, which I presume an agent does not often take, of remonstrating on account of the drafts. I think that in the deposition of Mr. Thackeray, notwithstanding he deposes with the guarded and discreet tenderness of a relation, it is yet very easy to see that he hints at something like profusion on the part of Mrs. Evans;—

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he says expressly, that she *was too generous, generous to a fault*; and a fault that undoubtedly is, because the province of a woman, in matters of liberality out of her husband's property, is certainly extremely limited. She may be the almoner of her husband, but in the disposal of his fortune she is under very great restrictions. There is one fact particularly mentioned, which is, the lending a large sum of money to a Captain Barnwell; and I own that if I was to look sharp to find out the commencement of impropriety of conduct, I should be apt to say, that I think I see the first speck of impropriety here attaching upon the conduct of Mrs. Evans; and one sees the folly, the imprudence of such conduct, in the event of this; for it *does* appear that this very Mr. Barnwell, to whom this money was lent, was the very first person to complain of her extravagance. It appears that Mr. Evans felt the impropriety of this, but he felt it in a way that an affectionate husband, a considerate man, would feel it;—he said to Mr. Griffith, that she had *spent a good deal of money*, but that *nothing gave him so much uneasiness in her expences, as the sum of money which she had lent to another person*. However, though this produced some dissatisfaction, it produced no rupture; it was overlooked.

She sailed for Calcutta in December, 1784; she arrived in 1785, and there they remained until 1787. It is a little material to see what passed during this interval. They were visited by a Mr. Wood, a respectable person, who is examined as a witness on the part of Mrs. Evans. Mr. Wood

Wood does not give the slightest intimation of any disagreements in this family; on the contrary, he says, that his behaviour, *as far as he ever saw it, was studiously and affectionately tender.* Mr. Maxwell, a person who was almost domiciled in the house, who dined and supped there very frequently, and was often upon parties with them, speaks likewise of their *living upon terms of the greatest harmony imaginable.* Mr. Griffith, who was much in their company, *has no insinuation to the contrary* in the least. Mr. Hannay, who states himself to have been intimate, *never heard the most distant surmise that he treated her improperly.* Mr. Halhed, and other witnesses, speak to the same effect.— Why, then, taking the whole of this evidence one way, it is certainly evidence extremely strong; and if to this we add the total absence of all evidence the other way, I think myself warranted to say, that Mr. Evans's behaviour, up to this period, was in every respect unexceptionable.

Two facts, in particular, appear, which it is impossible not to notice; one is upon the evidence of Mr. Maxwell; and that is of Mr. Evans's going up into the country, at a distance from Calcutta, to Morshedabad I think, or some other place, on account of her health. It may be said, there is no merit in that; any husband who had a sick wife would do as much; but, it must be allowed, she might have gone by herself: at any rate, therefore, there is great attention shewn in this instance of his personal attendance.

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The next fact, and a very material fact it is in the cause, is this; that, purely to gratify her wishes, and to consult her health, he quitted India; a country where he was almost naturalized, and where his prospects of avarice and ambition, at that period of time, were extremely inviting. He was then, as Mr. Maxwell says, *a senior merchant*. But, say the gentlemen, There is no great merit in that, *he had got enough*. Why, there is some merit in knowing that; it is a merit every body does not acquire; it is a proof of moderation, at least; and that he is not the *mean and avaricious person* which he has been represented to be; and, supposing he was that mean and avaricious person, still there is the more relative merit towards Mrs. Evans; because, if he was a man extremely fond of his money, and yet gave up his money on account of his wife, it is hard to say, that he had not some degree of fondness for his wife. Well, but say the gentlemen, His reputation was concerned. How so? She had already shewn that she could come to Europe without his personal attendance. I shall not then diminish the merit of so good an action, nor suffer it to be diminished, merely because it happens at the same time to be, what every good action is, a reputable one.

I am clear, therefore, that up to the time of the voyage nothing material had happened to cloud the happiness of this family. The voyage itself; the application made for it by Mrs. Evans; the undertaking of this voyage by Mr. Evans, are all a security to me that the fact was so; for, if he had been the savage tyrant that he is represented to have been, it is clear to me that she would never have

ventured upon such a solicitation with any idea of success; and it is equally clear to me that she would never have succeeded in it. Till this time, therefore, I see in the conduct of Mr. Evans nothing to blame; I see much to approve.

It is however upon this voyage, *malâ ducit avi domum*, that a change of conduct in Mr. Evans is first suggested to have taken place. It is not very well agreed what this change was; whether it was an indulgence of ungovernable fallies of ill temper; or whether it was a cool systematic plan of distressing his wife, by the most atrocious ill usage: but certainly two things more inconsistent cannot be, than cool hypocrisy and wild passion. Now it is a strong presumption with me against the supposition of its being a case of ungovernable passions, that passions so inordinate appear to have developed themselves for the first time in the course of this voyage. If so, I think there must have been an alteration in the constitution of this man's mind; which is highly incredible. The material witnesses therefore resort to the other supposition. This is the turn given to his conduct by the great witness in this case, Mademoiselle Bobillier; namely, that it was *a crafty command of his passions; that every thing that he did visibly, was studied for ostentation; and that his passions were kept for a secret operation when nobody was by.*

Now one cannot help observing, that taking it to be a cool deep-laid plan, to be pursued and carried into effect
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in a secret way; the scene for the execution of such a plan is as unhappily chosen as can be. Every body knows, that secrecy on board a ship is a thing not to be thought of. People cooped up in a ship live, and are forced to live, in that state of miserable intimacy, which makes almost every thing that is done or said, known to every other person: there is for a time (a very unhappy circumstance it is) almost a suspension of every thing like personal delicacy; every word and every act is known to almost every body. Now to suppose that a man in such a situation should first think of opening a plan of secret violence, one must first suppose, not only that he left his temper in India, but that he had left his common sense with it.

There are three witnesses only who are examined on this part of the case: there is Mr. Curry, a Mr. Humphry, and a Mrs. Hartle. When the question is asked, Why other witnesses are not examined? the first answer is, That Mr. White is dead; the second answer is, That it is not more necessary to call witnesses on the one side than on the other: not to have called more, therefore, is, if any, an equal imputation on both parties. This latter answer might be some answer to the other party; might serve, in some degree, to stop their mouths; but it is no answer to the mind of the court. In the next place, I say it is no satisfactory answer to the other party; because Mrs Evans is the complainant, and she is the party who is bound to make out her case. But, to go farther, Is Mr. White the only witness who could have been adduced? Were there

no other officers but Mr. White on board this ship? They have vouched indeed one female servant (it is an extraordinary thing that there should not have been more female attendants) a little black girl, whom they represent as too stupid to be examined as a witness; but I find also two men-servants of Mr. Evans, who are vouched in the case, and who are likewise mentioned both in the libel and in the depositions. They would surely have been most important witnesses, if they had been produced; because they would have spoken a great deal to what has been described respecting the foul cloaths, delaying the breakfasts, and the nature of the several orders that were given to them by both the parties in this cause. However, it does happen, that the case is left utterly destitute of all the illustration, which it might have received from their important testimony.

Of the three persons actually examined, to be sure Mr. Curry, so far as situation and character are concerned, is extremely worthy of particular attention. He was a medical gentleman, who attended this lady during the whole of the voyage; whenever she was ill, she was under his immediate care. He *swears that he saw her, and saw her in his professional capacity, every day during the whole of the voyage, three days only excepted, during which he himself was confined by indisposition.* It has been well said by the counsel for Mrs. Evans, that a medical person is a confidential person; every thing affecting her health must unavoidably have come to his knowledge, it could not have escaped him.

him. He gives an enumeration of symptoms; he applies a blister, about which, Mr. Evans differed in opinion; and I think this gentleman shews a sensibility, more than enough, about the honor of this blister. He has his own resentments against Mr. Evans, and he candidly states them; yet I still think I do see enough in his deposition to satisfy me, that though he would not misrepresent nor exaggerate in the slightest degree, yet I think nothing that he knew of Mr. Evans's conduct, to his disadvantage, would be either much softened or at all concealed.

Mr. Humphry was a fellow passenger, but a witness of no particular intimacy whatever with either of the parties; I think he says, *that he was not in the cabin, in their particular apartment, during the whole of the voyage.* He gives his opinion of Mr. Evans's temper and disposition; he thinks that it was *barb& and austere.*—That however I am to take merely upon the credit of Mr. Humphry's discernment, for he speaks to no facts whatever; and I must remark, that observations made upon a man's temper, upon the temper of a landsman, during a voyage of six months, ought not to be turned very strongly to his disadvantage; for every body knows that a voyage of that length is no very great sweetener of any man's disposition, during the time that it lasts.

Mrs. Hartle is a witness, who appears to have lived in considerable intimacy with Mrs. Evans; but most clearly she lived upon very indifferent terms with Mr. Evans.

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She charges him with much personal incivility to herself during the voyage; and it appears that her resentments have since been sharpened by later indignities; so that she is, as Dr. Arnold has well described her, *a sort of co-plaintiff in the cause*. I am to consider her therefore as deposing under the double danger of having inducements to take very strong impressions of facts to Mr. Evans's disadvantage, and of feeling no unwillingness to give such impressions their full force in representing them to the court.

The facts agreed to by these three witnesses are these:— In the first place, that Mr. Evans had procured, at a great expence, the very best accommodations a gentleman of fortune can have in a passage from India. So far all agree. And, in the next place, it is agreed, that she had of those accommodations (as it was highly proper she should have) the best share. Two of these witnesses, Mr. Humphry and Dr. Curry, are totally ignorant of any quarrels or disagreements, during the whole of the voyage. It is said, Mr. Humphry not being particularly intimate, his is merely a negative testimony;—however, for the reason that I have above stated, I think that a negative testimony, in such a case, is a very strong testimony; because it is not possible that any act of atrocious outrage could have happened on board this ship, without its travelling to the knowledge of most persons on board. Dr. Curry's testimony is still stronger; his is not merely a negative testimony; he says, that, *as far as ever he observed, Mr. Evans's conduct was studiously affectionate*. Now, his ignorance seems to me still

more irreconcileable with the notion of this ill usage; because, it seems hardly possible that it could have existed without coming to the knowledge of a person who attended this lady constantly upon the occasion of ill health. It is still more irreconcileable with the notion of its being a fact within the possession of any third person; because, though some secret ill usage might have passed between Mr. and Mrs. Evans, which was known only to themselves, and which, from a natural concern for their common reputation and quiet, they might not have divulged; yet it is very unlikely that if there were facts of outrage which got into the possession of a third person, that such facts should have rested there, and not have travelled farther.

There is, however, a third person on board this ship, Mrs. Hartle, who undoubtedly differs widely from both these witnesses; and upon her single testimony, the single testimony of an ardent witness, inflamed with resentments of her own, I am to take these facts, contradicted, as they are, by the silence, by the emphatical silence, of the two other witnesses: facts of a nature so atrocious, that they certainly have but little probability to support them, which can be founded on any argument arising from the general disposition of mankind, and which, from what I have stated in this particular instance, had no probability whatever, which is founded in the antecedent conduct of this gentleman.

The first fact which I shall observe upon is that most
atrocious

atrocious fact which is mentioned in the libel, article 6; viz. *That during the passage, Mrs. Evans being in a very low and bad state of health, and fresh air being absolutely necessary for her, Mr. Evans, with a wicked view to distress and increase her sufferings, refused to suffer, and would not suffer, a door to be kept open, or even opened at all, except when he wanted to pass in or out; that at the times he refused the benefit of the air to his said wife, he was not able to stay in the cabin himself during the exclusion of the air, but always retired to his own cabin, or some other part of the ship: and that once, when Mrs. Evans attempted to open the door to admit the air, she was prevented by Mr. Evans, who, with savage fierceness, seized her by both her arms, and, in great rage, with his utmost force and violence, threw her down three times, alternately raising her for that purpose upon some earthen guglets, or vessels used for cooling water, and thereby very much hurt and bruised her, put her to great pain and anguish, and increased her illness.*

The account given by Mrs. Hartle of this transaction, shews that even this account given in the libel is not at all overcharged. What she says is this, *That one morning, in their passage to St. Helena, the deponent and Mrs. Evans were in Mrs. Evans's room, walking towards Mr. Evans's room; that they observed him sitting there; that seeing them approach, he got up, and immediately went to and shut the door of the cuddy; that they were then under the Line, and there was not a breath of air stirring, and this deponent was extremely faint.* (So that in fact the cruelty stated seems to be

be a cruelty that rather attached upon the witness than the party, and so indeed Mrs. Evans represents it; for, her application, according to Mrs. Hartle's testimony, is this: *Do, Mr. Evans, let us have the door open; Mrs. Hartle is ready to faint.* She then goes on to say, that *Mrs. Evans then went towards and proceeded to open the door; that Mr. Evans, who was sitting with his legs up in an easy kind of posture, and was reading, then got up, and with a savage fierceness laid hold of both her arms, and then with violence threw her down, and she fell upon some earthen guglets for holding water, which stood close by the said door; and lifting her up again by her arms, with equal violence threw her down on the said earthen guglets; and she, the deponent, thought that by means thereof she was almost killed; and being greatly terrified thereat, went out to send the black girl to her assistance; that on going out she heard a noise, as if Mrs. Evans was falling a third time; that she returned into the cabin, and found her sitting in a chair, her whole frame appearing convulsed, and her face quite pale; that the deponent observed grasps of fingers on her arms, which appeared black and blue, and that the deponent had not before observed such appearances on her said arms, and they appeared in parts of which Mr. Evans took hold, and, as she is well convinced, were occasioned by him; that the said Mr. Evans, on his so throwing the said Mrs. Evans down, appeared in a very great rage, and he extended his mouth, and clenched his teeth in a revengeful manner, and his countenance quite changed with anger: and that the said Mrs. Evans appeared very ill and low for many days afterwards.*

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Now, to be sure, this is such an act, that one can hardly find an epithet to give it its due character. It is, as has been said, a demi-murder, a murder more than half executed. It is an act not to be excused upon any fallacy of passion: that a man, on so slight a provocation as this, should three times knock his wife down (a woman of very tender health) in the way that is here described, is an act that does go to the very full extent of what the law must deem to be matrimonial cruelty. It is a fact of that atrociousness, that a court of criminal jurisdiction would pursue with the greatest vengeance; and I need not add, that the common indignation of mankind would follow it to the latest period of the life of the offender.

Mrs. Hartle I cannot upon any idea suppose to be a person who comes deliberately to misrepresent; nothing looks like that. She is totally unimpeached as to general character; therefore *a priori* there is no reason why she is not to be fully credited. However, it is a good safe rule in weighing evidence of a fact, which you cannot compare with any other evidence to the same fact, to compare it with the actual conduct of the persons who describe it. If their conduct is clearly such as upon their own shewing it could not have been, taking the fact in the way they have represented it, it is a pretty fair inference that the fact did not so happen. If their actings, at the very time that the fact happened, represent it one way, and their relation of it, at a great distance of time, represents it another way, there can be no doubt which is the authentic narrative; which is the naked truth of the matter. Now, in trying Mrs.

Hartle's narrative by that test, I think I do see enough to satisfy me, that she has depos'd, I do not mean to say without principle, but she has depos'd with passion: and that this is a very grossly inflamed representation, produced by repeated resentments, conceived partly on her own account, and partly on that of Mrs. Evans.

What is the conduct that any person of common sense and of common humanity would have adopted, who had been present at such a scene of infamous brutality as this is? Why, a man, be his powers of body ever so weak, that had the common spirit and feelings of a man, would have interfered, without the least apprehension of personal consequences to himself: but here there is a lady present; a friend of the suffering party: Is it credible, that she should be present at such a transaction as this, without raising a general alarm?—Not to do so, for the purpose of obtaining assistance, is an act of brutality almost as brutal as the act itself: it is really being an accessory after the fact. Why, without reasoning upon it, mere instinct would have compelled her to do so. Now, what does she do? Does she apply to Mr. White? Does she apply to any officer? Does she apply to the surgeon? Does she apply to any one person who could have interfered with effect? There is not a man on board the ship, undoubtedly, who would not have lent a willing hand. Mr. Evans would have had good luck if he had not been voted into the sea, by general consent, upon such an occasion as this. Instead of this, what does she do? Why, she runs out, and sends in the

little black girl, who, they tell me, at this moment is too stupid to be examined as a witness; she sends her in to rescue this poor lady from the hands of this tyrant; and thus discharges the office, it seems, of a good friend, of a good christian, and of a human being,

What is done afterwards? Her friend is extremely weakly; is attended constantly by a medical person; and, as she swears, *is made ill for many days in consequence of this treatment*; yet this lady does not communicate one syllable of the matter to the physician, who was so much concerned to know it, and whom she saw every day: he is in total ignorance of all that has passed.

The counsel on the part of Mrs. Evans have very properly reproached Mr. Evans with cruelty, for not having communicated to Mr. Paumier the unhappy habit of intoxication, with which he has charged his wife. They say, it was his duty to have done it, as undoubtedly it was. Then, what am I to think of the conduct of Mrs. Hartle, upon this occasion? She was a person who was certainly under no restraint from any partiality to the defendant; directly the reverse. It is a behaviour, in my apprehension, so totally unnatural, under such circumstances, that I am satisfied such circumstances could not have existed. But, what does she do when she comes to England? What would any body have done in such a case, with common reflection? Why, clearly, have advertised the family, not maliciously, but confidentially; would have put them

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upon their guard; would have told them, that, with all the speciousness of manners which this gentleman assumed, she had been witness to a scene of horror, which shewed him to be a most intolerable tyrant. Not a word of all this passes. She visits regularly, upon the invitation of this very gentleman, as if nothing extraordinary had happened, and the family remained perfectly uninformed. I rely for these facts upon the testimony of Mr. Thackeray; for, how is the continuance of this gentleman's good opinion any way consistent with his knowledge of this fact? or, how is his ignorance of the fact consistent with the knowledge of it by any one of the family? I have all the reason in the world, therefore, to believe that the disclosure of this fact took place very recently before the commencement of this suit.

Let us now see the conduct of Mrs. Evans under all the pain, and all the terror, which such a situation must excite. No alarm is given by herself; yet in the account given by her of attacks made at other times, she pleads and proves that her piercing cries brought people from all parts of the house. Mere animal nature would have made its appeal to the ordinary feelings of other people: she *must* have done it; nobody could submit to be murdered in this sort of way, in silence. Yet I hear nothing of any cry of distress; it does not appear that a single person was collected by any expression of pain or suffering. She is equally silent before her coming to England: not a word to the physician in attendance; not a word upon her coming home to

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her own family. It is said, that all this was tender dissimulation for the character of her husband. That seems to me to be very hard to be conceived. I have been put in mind of Lady Strathmore's case, where a continued series of ill usage, for years together, was kept from the knowledge of every body, but three or four people: but then I must take along with me this fact, that the gentleman charged had taken every precaution to preclude a possibility of detection; for he had planted his own creatures about her: and the very first opportunity that she had of disclosing her real situation, the business blew up immediately. There was, I remember, in this court, the case of Mrs. Prescott: that was a case, to be sure, of a person who had suffered as atrocious ill treatment as one human being can receive from another, and she bore it with great, with wonderful resignation. But this was proved in that case, that she did not keep it entirely unknown to others; she implored the protection of her father, whenever she was ill treated; she communicated it to medical persons; not a word of harshness in the style of her complaint; her complaint to the court was conceived in strong language, but it was in language more expressive of sorrow than of anger: but still there was no dissimulation. Now, I do not conceive that Mrs. Evans would have been less prompt to complain than Mrs. Prescott was. I have looked into the libel in the present case, which certainly does appear to me to be drawn with sufficient acrimony; I have looked into the personal answers, and I cannot help saying, that these personal answers are written with full as much passion as prudence:

prudence: I do not see in these answers the marks of that perfect resignation which is so much contended for. I do not mean to say, Mrs. Evans appears in her conduct in this suit, or in any paper produced, to be a person who would assert her rights improperly; but I do say this, that she appears to me to be a person who would not dissemble her injuries in a way beyond all example, beyond all propriety and all reason.

Then, taking the fact upon this view of it, I feel no hesitation in saying, that what I collect is this:—That there was something of a struggle, how arising I don't know, but it was a struggle of no consequences; and that is the important point. If it had drawn consequences after it, there must have been other witnesses; and the witness who was there would have acted otherwise. It must have been therefore a trifle, and in being coloured as a matter of importance it has received an undue colour; the basis of the fact is extremely slight, and all beyond it is colour—is exaggeration—is passion.

Having disposed of this great leading fact in the voyage, I shall dispatch in fewer words the other facts which are charged: in the first place, because they are, compared with this fact, very slight; in the next place, because they stand upon the single testimony of Mrs. Hartle, who, in my opinion, has taken a very undue and extravagant impression of the whole business.

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There is another charge, which is so strong a proof of this, that I shall notice it for no other purpose than to exemplify the strong bias of this witness to make mountains of mole-hills. I mean her evidence upon that article which charges the business of the noifes. It is pleaded, *That while Mrs. Evans was in a very weak and sickly state, Mr. Evans accustomed himself, in the most unfeeling and cruel manner, to distress her and increase her pain, by making a violent noise with a hammer close to her.*

I had very great doubts about admitting this article. I admitted it upon an idea suggested naturally enough by the words, that this gentleman came, without any reason whatever, with a heavy massy instrument, to make a loud noise quite close to the head of a very sickly and infirm person. These are the ideas which that article, worded as it is, certainly excited in my mind. I do not believe that it could have entered into the conception of the most ingenuous person in this court, to have imagined how this would have ended: to have imagined that it should end in this gentleman's cracking almonds in an adjoining room with a hammer (which, being proper for such a purpose, could be no very ponderous instrument) and his afterwards coming to eat them in his wife's apartment. I do protest it is so singular a conceit, that if I did not see a great deal of unhappy seriousness in other parts of this cause, I might rather suspect that some levity was here intended against the court. I am sure of this, that if a man wanted to burlesque the ecclesiastical courts, he could not do it more effectually,

effectually, than by representing that such a court had seriously entertained a complaint against a husband, founded upon the fact of his having munched almonds in the apartment of his wife.

Another offence charged is, that he obstructed the circulation of air. Now, certainly that may be cruelty, because health may be affected by it: life may be destroyed by it. Here again I look, in vain, for the testimony of the physician. It is pleaded expressly, *that her complaints were much increased by it.* In the libel it stands thus: *That Mr. Evans, with a wicked view to distress and increase her sufferings, refused to suffer, and would not suffer, the door to be kept open, or even opened at all, except when he went in or out.* Now, any body would suppose that this door was kept obstinately shut during the whole voyage, except when he went in and out; and that this poor lady was shut up in an apartment from which the common element was excluded. Now, how does it turn out? Mrs. Hartle, herself an invalid, chuses to reside almost constantly in this apartment; her account is, *that he often shut to the door; sometimes the cuddy-door* (which I take to be the external door, in consequence of which he would suffer the inconvenience in common with themselves); *that at other times he would shut the inner door, between his apartment and theirs; and this,* she says, *he did without apparent cause,* that is, without a cause apparent to her. Now, am I therefore to presume, that because there was no cause apparent to her, that there, therefore,

was no real cause? Am I to call upon a gentleman, at the distance of two or three years, to shew a reason why he shut a door; merely because another person chuses to think (it is conjecture and inference merely) that he did this for the purpose of plaguing his wife? Were there no calls of private convenience? Were there no calls of private decency, but Mrs. Hartle was to be previously informed of them? Were there to be no moments of privacy from his own wife, much more were there to be none from the wife of another gentleman? It is said, that in the fact particularly alluded to, he was reading at the time—Why, is a man to be bound down so strictly to time, that he must put on his clean shirt at the very moment of his shutting the door? that he is not to be permitted to take up a book, even for a few minutes? It is said, by way of aggravation of the cruelty, that *he himself did and could walk out upon the deck.* Why could not the ladies do the same? If he did shut the door, they could have opened it with as slight an effort as he shut it. Is it pretended that he locked the door? it has not been contended that he did; but if he had locked it, they had still another retreat, for, as I understand the evidence, their cabin had a door opening to a gallery, communicating with the open air. But, supposing some inconvenience was actually produced, yet, in order to make it cruelty, I must affect him with a knowledge that it would have that effect, and in a painful degree: for, unless they prove that he was perfectly sensible of that, namely, what the number of necessary inlets for air was; there is nothing

nothing like cruelty in the case. How is he to know, more than Dr. Curry, who is convicted of a gross mistake respecting this subject? He describes the number of doors and windows, and, amongst the rest, the door which led into the apartment of Captain White and the officers; and then goes on to say, *that if any one of these doors or windows leading into this (Mrs. Evans's) apartment were shut, the circulation of the air would be obstructed in a very high degree.* Now, the fact proved to me by Mrs. Hartle in this case is, *that the door which led into the apartment of Captain White, was kept shut during the whole of the voyage, except only three days; and that it was so kept shut at the particular request, and for the particular convenience, of Mrs. Evans.* What reason have I to say, then, that Mr. Evans knew the consequences of opening or shutting one inlet of air, when I find a medical person, perfectly well acquainted with the apartment, lying under so total an ignorance with respect to the very same particular.

The article of foul cloaths was another article which was admitted merely upon the ground of its being associated with other articles of more weight: because, where there are articles of great strength in their own nature, the court is always less delicate about admitting slighter articles, which it would not have admitted singly and standing by themselves. To be sure, it might be a cruelty, if, as described in the libel, he brought large collections of loathsome cloaths, in a very hot climate, into the apartment of a person extremely sick, without any necessity for it, or

without any signal convenience. Either this necessity, or some signal convenience, would justify it; and it must be shewn that there was neither; for certainly I shall not presume it so, in order to make it out to be cruelty. Now, what is proved in this case? These foul cloaths hung at first in the quarter-gallery. Upon a suspicion entertained by Mr. Evans (whether right or wrong is utterly immaterial) that these cloaths were pilfered by Mrs. Hartle's black servant, they were removed into his own room, where they generally remained; sometimes, as Mrs. Hartle says, *for near a month*. He therefore had the general inconvenience of them; and it certainly is to me a pretty strong presumption, that he did not conceive these bags to be bags of poison, when he made his own room their ordinary station.—Mrs. Hartle says, *that they were from thence occasionally brought into Mrs. Evans's room*, which being a larger room, they undoubtedly could not be more offensive than they had been in his smaller room. She says, *she has seen him bring them in, and his man Oliver assist in sorting them*. In order to be sorted they must be spread, and accordingly they were spread. Now, what hindered the ladies from retiring during this operation? And it has, besides, been justly observed by the counsel, that in such situations as these a great deal of accommodation must be practised. Every body who has been in such situations knows, that he must submit to a great deal that is very loathsome; and he must perform a great deal that is very servile. But, however, she says, *they were removed before dinner*: and supposing that the sinell did not entirely remove

move with them, who had the most of it? Undoubtedly this gentleman had not been upon a bed of roses all the time, according to their own account of the matter. But, all this *could not be for convenience*, she says. Why? *Because he used to spread them, under a pretence of sorting them.* Why, has not she herself proved in her deposition that *he actually did sort them, and that she had seen both him and his man Oliver employed in that operation.*

Another cruelty is that respecting the denial of breakfast, which is charged in the seventh article of the libel; and it is charged thus:—*That she used to give orders to one of Mr. Evans's servants to boil her tea-kettle, that she might get her breakfast early, as necessary for her health, not only on account of a blister on her side, and a burning thirst that then afflicted her, but also by reason of her being then pregnant; at which times Mr. Evans positively refused to suffer, and would not suffer, his said servant to boil her tea-kettle, and thereby deprived her of the means of satisfying the cravings of nature, and obliged her to resort to drugs for relief.*

Now the proof of this last consequence, of her resorting to drugs for relief, is this, that *one morning Mrs. Hartle saw her take some pills*; but that those pills were specifics against the want of a breakfast, or had any connection with the want of a breakfast, there is not the least suggestion. In this case, the men servants to be sure would have been the satisfactory witnesses; because they could have spoken to the orders that were delivered on both sides; to the orders given.

given by Mrs. Evans, and to the orders given by Mr. Evans. But all that I can find upon this article is, that Mrs. Hartle positively swears, *she knows of no general orders given to the servants not to boil the kettle.* I find also from her, that *Mrs. Evans did send, upon several occasions, about eight o'clock, to her for tea.* I find, on the contrary, from Mr. Humphry, *that he generally saw, every morning at eight o'clock, the servant going with the tea-kettle:* and therefore it is no unreasonable presumption surely, that an omission of any one morning of a punctual attendance at that hour, might be the effect of some accident, or of some particular inconvenience.

It is true indeed, as I find from Mrs. Hartle, *that she one morning heard Mrs. Evans desire Mr. Evans, whilst dressing, to let one of his men-servants come to get the breakfast, and he replied he should not come:* but I do not find from Mrs. Hartle, that this application was made under a representation of some particular urgency or distress. It amounts to no more than this; that the servants were at that time engaged about his person; that she desired one of them might come immediately, and he refused. This might be uncivil, or it might not: that depends upon the manner of the refusal; upon the delay interposed; and upon the occasion that was at this time occupying the attention of the servants. But I shall not hold this to be decided cruelty, till I am first satisfied of this position—that if a husband is employing his servants about his own person, he is, upon the very first summons, to detach them on the commands of his

wife ; and that if he declines this, the very instant that it is required, it is not only an incivility, but that gross inhumanity for which the law will grant relief.

There is one charge of a graver complexion, and that stands in the tenth article :—*That one evening, whilst the ship was in her passage, and whilst Mrs. Evans continued in a very weak and sickly state of body, pregnant, and scarce able to move, and being desirous to go to bed, she called to Mr. Evans, who was in an adjoining cabin with two of his men-servants, desiring he would send one of them to unlatch her cot, that she might go to bed; but that he positively forbade his said men from following her directions, and she thereupon called a little black girl to assist her; upon which Mr. Evans ran into Mrs. Evans's cabin, and in great rage and anger pushed the said little girl away, and, with great fury and force, gave Mrs. Evans so violent a blow or push as drove her to the further or other end of the said cabin, and laid her prostrate on the floor, where she remained a considerable time without being able to rise, and thereby greatly hurt and bruised her, and put her in great peril of her life: and that Mr. Evans, without regarding the helpless situation to which he had reduced her, with the greatest indifference retired to his own cot in the next cabin, and from thence uttered the most shocking and abusive oaths and imprecations against his said wife.*

Now there are three witnesses who are vouched in this very article, who certainly could have proved a very considerable part of it; they are, the two men-servants, and
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the black girl. It stands however a naked charge, without evidence, or even an attempt at evidence;—a charge in itself almost of direct murder, and subject to all the observations which I have made, upon the impossibility of such a fact as this escaping notice; and yet not a single witness is produced to it! Surely it is not a sufficient apology in such a case to say, that it is a misfortune that it could not be proved; because it is a misfortune which must have been perfectly known, I apprehend, to the party, at the time when she inserted this article. And I must say, that to blacken the records of the court with an accusation of so very grave a nature, without calling one witness to support it, is taking something of a liberty with the court, and is taking a pretty gross one indeed with the person who is the subject of such an accusation.

Upon the whole history of the voyage, and the facts contained in it, I find myself compelled to say, that I have no evidence which satisfies me, that Mr. Evans has acted in this voyage in a manner inconsistent with the duties, and the rights, of a husband. If he had so done, it is impossible but that there must have been ample evidence; on the contrary, a great part of the evidence is absolutely irreconcileable with the notion of such misconduct having been practised. The evidence that does support it comes from the mouth of a person, who is in a great degree disabled by her prejudices.—But let me not be understood to insinuate, that this witness comes forward to deliver a false testimony. I am firmly persuaded that she believes every word

word she says; but she trusts to her resentments, rather than to her recollections; she brings with her sincere intentions, but she does not bring a dispassionate mind; she does not bring that caution, and that sobriety of mind, which belong to a witness, deposing in a court of justice, upon matters by which the character of another individual may be so deeply affected.

The voyage ended in the middle of September, she being then, I think, as was observed by Dr. Laurence, not above three months pregnant; and about six weeks of this time had been spent upon the voyage from the Western Isles to the chops of the Channel; so that the pregnancy is clearly proved, I think, to have been in such a state of mere incipiency, during some of the facts spoken to, that it cannot be understood to make any material ingredient in the cruelty.

Upon their arrival they were received, as far as appears, with affection, and with politeness, by their friends on both sides. Nothing transpires of all these horrible businesses, which had happened on board this ship. Mr. Evans is proved by Mr. Thackeray to have then possessed his good opinion, and that of other persons of his family.

Now, what is Mr. Evans's behaviour upon his arrival? In three or four days he invites Mrs. Hartle, a person not very acceptable to himself, but the friend of his wife; he likewise desires Mr. Paumier to give her all necessary at-

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tention, to give her every possible attention during her illness. He soon after goes over to France with her, where he engages in his service a Mademoiselle Bobillier, a young French woman, at the express request of his wife: they return, and they settle in Bond Street. Mr. Thackeray, to whom I very much adhere during the whole of this business, says, *That Mr. Evans's general conduct and behaviour to Mrs. Evans was very attentive; and that he saw nothing improper therein, till near the time of her lying-in:* he admits too that Mr. Evans supplied her liberally with money till almost the time of the unhappy separation.

The evidence of this Bobillier is, *that she herself never was a witness to any quarrel between them; but, that, she says, was mere craft on his part;* for she infers, from tears which she has found Mrs. Evans in (and the counsel have laid much stress upon these tears) that there must have been secret ill treatment. I own, that tears, in the case of a very nervous person, do not seem to me to lay the foundation of any very conclusive evidence one way or the other.

In January, going to a ball at Mr. Hastings's, she had, somewhere or other (I think it is not clearly proved where) the accident of a fall. It is spoken to by a great number of witnesses on both sides. This fall was not the occasion of much immediate injury, as far as appears: this appears however from many of the witnesses, that upon that occasion Mr. Evans acted with a very laudable tenderness.

tenderness. He carried her up stairs in his arms. He applied to Mr. Paumier to recommend a doctor, having his apprehensions of the consequences which it might occasion: Doctor Denman was the person who came. And it appears that she actually did miscarry within three or four days after this fall. To be sure, the argument of *post hoc, ergo propter hoc*, that because the miscarriage immediately followed, therefore it was occasioned by that which it followed, is not a very conclusive one; for it is no very easy matter to trace a misfortune of this sort to a precise cause, and with such exactness as to say that, either in the whole or in part, it was owing to the fall, and to nothing else.—But, however, this at least is clear, that to her nurse, Mrs. Tate, a confidential person, most certainly, Mrs. Evans did herself ascribe her miscarriage to that accident. It certainly is not improbable, though no immediate injury had happened; because, as it is generally understood, fright, alarm, and agitation of spirits, frequently do precipitate such matters; and what makes it more probable in this instance is, that it is in proof that this lady was in the habit of miscarrying, for it is proved she had had two miscarriages before her return to Europe.

Yet, in her libel, Mrs. Evans herself has ascribed the miscarriage to a very different cause: for it is pleaded, that *it was occasioned wholly by the pain, anxiety, and terror that she was continually in, from the cruel treatment of Mr. Evans.* I have above stated, what Mr. Evans's *visible* conduct was from

Mrs. Evans's own witnesses; from her own family; from persons of honour and of caution, and who certainly would not have dissembled it, had it been otherwise.—What was not visible must be merely conjectural; and, in my apprehension, very perversely so, if it is to be represented as opposite to that which was visible. To what this miscarriage was imputable I do not pretend to say; but I do say, that it was not owing to the cruel conduct of Mr. Evans; because, if it had, it is most perfectly clear, that such conduct must have been proved. Now, to whom is it known, that Mr. Evans was the author of that miscarriage? Why, to one witness only. To Mademoiselle Bobillier, a young woman of the age of twenty-five, who does take upon herself positively to swear—that *this premature delivery* (I use her own words) *was entirely occasioned by the unkind behaviour of Mr. Evans to his wife, and for want of proper attention to her during her pregnancy.*

As this witness makes a pretty conspicuous figure in this cause, it is necessary to consider a little who she is. Her deposition, upon the face of it, is highly coloured and inflamed; very descriptive; full of image and epithet; something in the style really of a French novel, of the trash of a circulating library. At the time of her giving in her deposition, it is also in proof that she had had a pretty acrimonious suit with Mr. Evans. She is a young woman, who having been first known to Mrs. Evans upon her former excursion into France, was on this second excursion taken into the family as a governess; and was brought

brought to England in November; she therefore was in the service only two months of the pregnancy, and she most positively declares, his visible behaviour to Mrs. Evans was perfectly proper during the whole of the time.

She appears to have been on terms of great intimacy and confidence with Mrs. Evans. I need not observe upon the abuse that is too frequently made of that sort of situation.— Female friendships are often hazardous, in the case of married women, but, of all friendships, humble friendships are the most dangerous. The humble friend has an obvious interest in falling in with the present humour; in creating, and in inflaming differences between the husband and the wife; in acquiring importance to herself by being a sort of third estate in the family. I own I cannot but think that it has been a very great misfortune to this family, that this person ever became a member of it: for in this I am clear, that if she aggravated matters, in her reports to Mrs. Evans, only half of what she has done in her reports to me, she has employed an activity that has been most fatally successful in troubling the repose of this family.

To be sure it is a monstrous proof of an intention to exaggerate beyond all decency of appearance, that this witness, who had been little more than two months in the family, takes upon herself positively to say, *That this miscarriage was owing to her being kept, during the whole period of her*

her pregnancy, in a state of persecution. Taking this assertion in the most qualified way, it is a very unwarrantable assertion, undoubtedly, for the witness to throw out. What possible confidence can I then have, that any thing she says is true, when I find her swearing at random to what it is impossible she could know, whether it be true or not ? The fact is, she is not supported by any one witness in the case ; there is not another witness examined, on the part of Mrs. Evans, who refers the miscarriage to the same cause. Mrs. Thackeray makes no reference of it to that cause ; Mrs. Evans herself makes no reference of it to that cause ; she refers it, in her conversation with Mrs. Tate, to another cause entirely : to Dr. Denman, and to Mr. Paumier, she does not pretend to insinuate that it is the effect of any such ill-treatment. And as to his want of attention to her, which is stated by this witness, it is most positively contradicted by the person who must know it best ; that is, by the very apothecary who attended her, and who speaks, in the strongest and most unreserved terms, to the care and attention shewn to her by Mr. Evans.

The libel pleads, in the eleventh article, to this effect :—
That after the arrival of Mr. Evans and his wife in England, and whilst they resided in Bond Street, she was delivered of a seven months child ; which premature birth was wholly occasioned by the pain, anxiety, and terror she was continually in, from the cruel treatment of Mr. Evans ; and that whilst she was in labour he barbarously refused to call any assistance

assistance to her; and when, at last, assistance was had, he obliged her attendants to leave her, when he bolted the door upon her, and detained her from them for more than an hour, notwithstanding the pains of labour were then severely upon her, and her life was in imminent danger, for want of assistance: and that after her delivery, she was for six weeks, or thereabouts, confined to her room, in a very low, weak, and languishing condition, and her life was despairs of; notwithstanding which, Mr. Evans greatly disturbed, harassed, and tormented her, by frequently making great noises, and by knocking and thumping in her bed-chamber, and thereby preventing her from taking any rest; and also by suffering and allowing his men-servants to make great uproars and disturbances, when intoxicated, over her head; all which endangered her life.

Now here we are all agreed; the counsel on both sides concur in the atrocity of this conduct; because, if it be true, that he treated his wife in this brutal manner, in an hour when every animal and every moral feeling called for his tenderness, he is one of the most disgraceful exceptions to human nature that one has ever heard of; a more enormous conduct cannot be figured by the imagination; thus to attempt the life of his wife, and the life of his own infant, is a cruelty that out-herods Herod. It is impossible that the friends of any woman should suffer him to live one minute afterwards with her, if they were not destitute of common sense, as well as common humanity.

Bobillier is the principal witness upon this article. I had

almost said the only witness ; and I am satisfied that the account which she gives is utterly discredited, even by herself, as well as by the other witnesses who are vouched for this article.

The account that she gives is this :—That *in the month of January, 1788, she was delivered of a seven months child; which premature birth was entirely occasioned by the unkind behaviour of Mr. Evans towards his wife, and for want of proper attention being paid to her by him during her pregnancy; she having been constantly kept, during the whole period of her pregnancy, in a state of agitation of mind, by the teasing contradictory behaviour of her said husband, who never suffered her to have a minute's peace, and who always took occasion to quarrel with her from the most trifling occurrences.* That, *about two o'clock in the morning of the day on which Mrs. Evans was so brought to bed, Mr. Evans came into the deponent's bed-chamber, and, having awoke her, he told her that Mrs. Evans wished to speak with her.* (This is the proof that this gentleman barbarously refused to call assistance, when he was the very first person that got up and went into the apartment of this confidante, and for this express purpose.) *She went into her apartment, she says, and then gave her such linen as was necessary for her situation.* What she means by that expression is not very clearly to be understood, because it is most clear from what follows, that she had not any idea that at that time Mrs. Evans was going to miscarry; for she goes on to say, that *neither the deponent, nor Mrs. Evans, as she verily believes, had then any idea that*

she

she was going to miscarry; the pains she suffered, and the symptoms attending them, being entirely different to what the deponent understood had been the case on her first lying-in: that Mrs. Evans then informed the deponent of her having made Mr. Evans acquainted with what she felt, and the deponent verily believes that he well knew that his said wife was then in the pains of labour, and going to miscarry.—That is to say, these two women, this woman of the age of twenty-five; the other lady, who had had children, and who had twice miscarried before, have no suspicion of what is going to happen; but, for the purpose of making out an act of cruelty, he is to be affected with the knowledge of this circumstance, with the knowledge of a fact, of which these two women, as she declares, were themselves utterly in ignorance.

She goes on to say, that he desired the deponent to return to her apartment, and said that he would give her notice if she became worse; that Mrs. Evans then told the deponent, that she wished her to stay by her; but Mr. Evans having expressed his intention to abide by her himself, Mrs. Evans did not dare to insist on the deponent's continuance with her, for fear of the resentment of Mr. Evans.

That her continuance was pressed is not at all stated. Mrs. Evans desired she might stay; her husband said he would stay, in order to give notice if the intervention of any other person was necessary. This desire, from what appears, was immediately given up, and this woman accord-

ingly returned to her own bedchamber. *About seven o' clock on the following morning, she says, she went into the bedchamber of Mrs. Thackeray, the sister of Mrs. Evans (who was then on a visit to her) whom she acquainted with what had happened in the course of the night.* I think she would have acted at least with as much prudence, if she had done this at the very moment when she had been summoned by Mr. Evans. She however acquainted her then with what had passed, and Mrs. Thackeray instantly said, *she was sure her sister was going to miscarry, and she immediately got up.* Mrs. Thackeray then sent for Mrs. Webb, the mother of Mrs. Evans, and Dr. Denman; they both came about half after ten o' clock in the morning, at which time, Bobillier goes on to say, *Mr. Evans was still in the bedchamber with Mrs. Evans, and had not himself given any directions whatever in regard to her, although fully aware of her dangerous situation;* in short, that he remained so many hours perfectly cognizant of the situation of his wife, without giving any directions with regard to her.—Now let us enquire what Tomlins says on this part of the cause. But I must first take notice, that Tomlins is the waiting-maid of Mrs. Evans, and a witness who is examined on her side; yet she is a witness whom they have not thought fit at all to examine to this matter of the lying-in. All that she deposes on the subject comes out upon the interrogatories put by Mr. Evans. In the next place I must take notice, that there is another person, and that is the nurse, who must have also been cognizant, and in a very informed degree, of every thing that passed; and it is a circumstance that cannot escape the observation of the court, that this

this nurse is not at all produced on this side. Why, it is impossible but that these two persons must have known every thing that happened upon this occasion.

Tomlins, however, is examined upon interrogatories as to this fact ; and what she says is this, *That in the morning, the house-maid told her, that Mrs. Evans had been ill ever since three or four o'clock in the morning ; that she the respondent, going up between eight and nine the same morning, found Mrs. Evans in bed, crying ; when she told the respondent she was ill, but knew not what was the matter with herself ; but the respondent, from the account she gave her, thought she was in labour ; and the respondent almost immediately went down and told the circumstance to Mr. Evans ; who desired her to send for the doctor as quick as possible.*

Then it is proved by this witness, that at this time Mr. Evans was down stairs, though Bobillier positively swears that he was shut up in the room with her till between nine and ten o'clock. He was then down stairs, and, upon the first intimation of an opinion given to him that she was going to miscarry, he did immediately order a doctor to be sent for as quick as possible. That he had not himself given any directions with regard to her, where is the wonder ? why, were there not women in the house, upon whom that office naturally devolved ? Mrs. Thackeray, her own sister, was in the house. Why, is it to be understood that on such occasions it is a duty which adheres so close

to the character of husband, that it cannot by any possibility be discharged by deputy? Is it to be insisted that it was his duty, and his duty alone, to give such directions himself; and that it is a crime in him that he relies upon the discretion of the persons about her? This is such an imputation that would affect the character of almost every married man, if it was permitted to weigh for one single moment. However, *he then came out of his bedchamber*, as Bobillier says, *but not before the arrival of Doctor Denman*. She says, Mrs. Evans told her a great deal of conversation, and, *taking hold of her by the hand, begged her not to leave her any more*. (This is one, amongst many, of the proofs of that sort of unhappy intimacy, I think, which subsisted between these two persons.) She goes on to say, that *Doctor Denman being afterwards introduced, immediately told Mr. Evans, Mrs. Webb, and Mrs. Thackeray, that she was going to miscarry; and the said ladies last-mentioned thereupon sent for a nurse to attend Mrs. Evans, but Mr. Evans gave himself no concern about it*. Why, what concern was he to give himself about it? The doctor was called, and the nurse was called. What then remained for the husband to do? I should have been glad to have had it stated, by either of these ladies, what the proper or possible conduct of a husband in such a situation should have been.

Bobillier then goes on to say, *That he afterwards burst into the room in a very abrupt manner, so as greatly to alarm and terrify Mrs. Evans, who was then in the pains of labour, and said, that they had got his tea-pot; which was immediately*

ately sent out to him. Mrs. Thackeray mentions, to be sure, the same circumstance of the tea-pot; but not one word of this abrupt manner, which had the effect of frightening this poor lady, in this situation: all that she says is, that *he put his head into the room, made enquiry after his tea-pot, but made no enquiry after Mrs. Evans.* This then is the whole of the cruelty; that when he came, having some particular fancy for this tea-pot, which, perhaps, was not in particular use at that time, he desired to have it out, and retired without at that moment making a particular enquiry after his wife.

Another fact of cruelty is, that he refused the nurse the *elbow chair.*—That, every body knows, is one of the high prerogatives of these ladies, upon such an occasion; and one would have expected, that the nurse herself would have come forward, with no little acrimony, on such an account: but, on the contrary, she is examined, and I don't find that this circumstance of the elbow chair has made that impression upon her mind, which it seems to have done upon that of Mademoiselle Bobillier.

I come now to that which is the most atrocious fact in the cause, and a most atrocious one it is—that after it was fully ascertained, that this lady was going to miscarry, this gentleman turned out the attendants, and kept this unhappy lady by force, with the pains of labour then upon her, to the manifest danger of her own life, and to that of his.

his own infant, and kept her shut up, absolutely excluding all sort of assistance.

This is what is positively sworn to by this Mademoiselle Bobillier. I own, upon the face of it, it is a thing grossly improbable; knowing, as every man does, the natural and the laudable warmth of women respecting a business of this nature—the delivery of another woman. I think, therefore, it is impossible but that, if a barbarity of this nature had passed, nothing could have stopped the women who were in the house from making their immediate way to the assistance of this lady; and I am very sure, that nothing would have stopped them from making their way to this court, to give a representation of what had happened. There is not a single witness who comes forward to say one word about it; and yet the nurse has been examined, who is stated to have been in the outer apartment, and to whom it is positively said to have given great uneasiness; Bobillier's words being, *to the great surprize and disappointment of her mother, of this deponent (Bobillier) and of the nurse, who was uneasy thereat, for fear of the bad consequences which might attend the delay.*

Now, what the nurse says is this, That she has every reason to believe, that Mrs. Evans was, during her lying-in, attended by proper persons, and had proper assistance, comfort, and support; that she has seen Mr. Evans several times carry his wife in his arms, and treat her with great tenderness

tenderness and affection ; that *she knows not that the premature birth was occasioned by the ill-treatment of Mrs. Evans by Mr. Evans, and never heard the same while she continued to attend her, and never witnessed any ill-treatment of him towards her.* That Mr. Evans did not in her presence, or to her knowledge, when *she was in labour, refuse to call any assistance, or oblige her attendants to leave her, or detain them from her, nor was her life in danger for want of proper or any assistance.* This then is the account given by this nurse, who is vouched as a person upon whose mind this transaction made this deep impression.

Bobillier goes on to say, that *she verily believes that the life of Mrs. Evans was in danger by the cruel behaviour of Mr. Evans towards her, as well during the night preceding the delivery, as during the time she was locked up in the room.*

I have, in opposition to that, the evidence of Frances Tilbury, who was the house-maid ; of Mary Tate, who was the nurse ; of Mary Mayall, the wet-nurse ; of Dr. Denman, and of Mr. Paumier ; and I ask if it is possible that all or any of this could have happened, and that not one of these persons should speak at all to the matter ? Is it possible that they should have given a representation of it so totally inconsistent ? But look at the conduct of the parties in this case. What is proved ? Why, undoubtedly the mother, who had come at this time ; undoubtedly Mrs. Thackeray, who was in the house at the beginning, must have fired with indignation upon such an occasion. But there is nothing of this

this sort intimated in the evidence of Mrs. Thackeray. The account she gives is simply this:—That *she was at Mr. Evans's in January, 1788, and then saw her sister, Mrs. Evans, and staid there with her four days; that Mrs. Evans then spoke of her expecting to be delivered in two months from the said time; but that on the last morning of her being there, the deponent understood Mrs. Evans was very ill, and was in bed with Mr. Evans; and, being about seven o'clock in the morning, the deponent was alarmed by the account, and desired of the servant who told her of the circumstance, that the doctor should be sent for.* Very properly, without doubt; Mrs. Thackeray was the proper person to have delivered these orders; and as to the formality of sending to the husband, that the orders might be delivered through him, that was a formality that might certainly be very well dispensed with. *About nine o'clock in the same morning, Mrs. Thackeray says, she made enquiry whether the doctor had been sent for? when she understood, to her surprize, he had not; on which she sent a message to Mr. Evans, desiring he would not delay a moment sending for the doctor, as he knew her to be in a very dangerous critical way.* This is about nine o'clock; though Bobillier has sworn, that between nine and ten she found him shut up with her in the room, and that nothing had been done. Now, there is no proof in this case at all, that this message was delivered to Mr. Evans. However Mrs. Thackeray goes on to say, that, *understanding Mr. Evans had arose, she went into his room, and found Mrs. Evans in bed therein; that she was very feverish, greatly agitated, and in pain, and she brought her in labour; that, about eleven o'clock the same day, she,*

she, the deponent, was making tea for Mrs. Evans in her room, when Mr. Evans came to the door, and, putting his head into the room, told the deponent, that she had got his tea-pot, but made no enquiry about Mrs. Evans; that shortly afterwards Dr. Denman came, and confirmed the certainty of her being in labour.

Why, then, all that I see proved in this case, by Mrs. Thackeray, is this; that she in the morning gave very proper orders, that the man-midwife should be sent for; that the man-midwife was not sent for, as he ought to have been, owing to the neglect of the person who received those orders, but not, as it appears, owing to the neglect of Mr. Evans: that between nine and ten, understanding he had not been sent for, she then sent a message, desiring that he might be sent for; and there is evidence over and over again in this case, to shew that Mr. Evans not only did send, in the manner which has been mentioned, but that he did, what most husbands, I presume, don't think themselves under any moral obligation to do; and that is, that he actually took his hat, and went out upon the business himself. But what weighs most with me in this case, and which is constantly uppermost in my mind, and repels every intimation of this sort, is the consideration of what was the behaviour of the persons who must best have known, and most deeply have felt, the misconduct of Mr. Evans, if any such had existed.

Well, the delivery is effected, and is happily effected;
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the child is born.—Now, is it possible, that, after a behaviour so atrocious as Mr. Evans's is represented ; is it possible that no resentment should have been expressed on the part of Mrs. Webb, the mother, and the other relations of the family ? This is absolutely incredible. It is proved by Tilbury, that, *presently after, Mr. Evans hearing the door of Mrs. Evans's room open, he went to it, and Mrs. Webb came to the door, and plainly told him, in her hearing, "Thank God, it is all well over with Mrs. Evans, at last!" on which Mr. Evans asked her what Mrs. Evans had got? to which she replied, A girl; and Mr. Evans, about an hour afterwards, went into the room.* I here ask, if it is conceivable, for one moment, that a busines of this fort should have passed off just as smoothly as if nothing had happened to have discomposed the temper of any one person who was concerned in it ? That is absolutely impossible. Taking then the whole of this busines, without entering into the more minute circumstances, the principal conclusion which I arrive at is this, that there is no one fact in this case which I shall take upon the credit of that witness Bobillier. Of the other witnesses I go the length of saying, that they have depos'd with passion ; but of her I have no hesitation to say, that she has depos'd absolutely without principle.

The next charge is that of making the noises, and which is depos'd to singly by Bobillier : there is not another witness who has spoken to it. Tate, the nurse, who must have heard these noises (and who must be a nurse in the constitution of her mind very different from all other nurses that one has

has ever heard of, if she was willing to dissemble this ill behaviour of the noises) she is not examined at all by them. Tomlins, the waiting-maid, who must have been frequently in the room, is not examined upon the subject. Mayall, the wet-nurse, is not examined upon the subject. On the contrary, here are a cloud of witnesses who depose the reverse. There would be no end of going through them all; there is Mayall; there is Frazer, Tate, Tilbury, who all depose, *uno ore*, that they know nothing of these noises, excepting, that when there were noises, Mr. Evans interposed, and expressed a great deal of resentment; that he cautioned his servants against making these noises; in short, that he did as much as any master of a family can do to prevent the interruption of his wife's quiet.

As to his general attention to her during her illness—they have pleaded a total want of it; which, to be sure, would have been a very natural consequence of that which they have pleaded—his barbarous refusal to call assistance. But his attention to her is established beyond a doubt.—Tate speaks to it; Mayall speaks to it; Tilbury speaks to it; Dr. Denman speaks to it; Mr. Paumier speaks to it more fully. I do believe, that there is hardly a case, in which a husband could collect upon the subject so many favourable testimonies, as it has been the good fortune of this gentleman to bring together of that fact.

After this discussion, it would be idle for me not to say, that I do consider the whole imputation as an absurd ca-

lumny. I have no other way of accounting for the conduct of the relations. If the fact had been as is pleaded, it is impossible but that they must have known it ; and if they had known it, they must have been destitute of all common sense, and of all common humanity, if they themselves had not been forward in loudly demanding a separation the very day after it had happened.

From that time there is a chasm in the history of actual cruelty till the fourth of October, 1788 ; of actual cruelty, I mean, so far as it is concerned in bodily acts. They travel, by the advice of Dr. Denman. Bobillier says, that *Mr. Evans made disagreeable difficulties.* What those difficulties were, I don't know ; they might be real difficulties. Mr. Evans had not been able to settle his affairs in India, and it might have been very inconvenient to him to leave town ; and the difficulties being real, might not be the less disagreeable for being real. But however they do travel ; and there is a space of nine months, I think, in which his cruelty appears to have been in a pretty deep sleep. However, it was only the sleep of the lion ; for, upon the fourth of October, an act of barbarity was practised, which, to be sure, is equal to any of its predecessors.

It is stated in this way in the libel :—That, *after Mrs. Evans recovered from her lying-in, Mr. Evans would seldom let her lie at her ease in her bed, by frequently thrusting his elbows and knees into all parts of her back, sides, and loins, and thereby greatly hurting her ; that in the night of the fourth day*

day of October, 1788, Mr. Evans and Mrs. Evans being in bed together, in their house in Conduit Street, he, without any cause or provocation whatever, began to quarrel with and abuse his said wife, and with great force and violence seized her, and dragged her to every part of the bed; beat her head against each of the bed-posts, and twisted, distorted, and forced her limbs to so violent a degree, that he brought her feet close up to her mouth; in which condition she swooned away; and in that helpless state, after giving her several dreadful blows and kicks, which caused the blood to issue from her mouth and other parts of her body, he turned her out of bed naked on the floor; in which condition, helpless, and apparently lifeless, she lay a considerable time, until her piercing cries brought three women from different parts of the house to her assistance, who found her naked on the floor, with her mouth full of blood, to all appearance dead; her limbs quite cold and stiff, and her legs crossed, and so twisted, that it was with great difficulty they could extricate them, and which they could not begin, until she shewed some appearance of returning life, and could not effect until they had been with her upwards of an hour; and that, by the aforesaid cruel treatment, Mrs. Evans was put to great pain and anguish, and her life was in imminent danger; and on the next day several marks and bruises were very plainly to be seen on various parts of her body.

There are three women, therefore, who are vouched in this case; that is, this Bobillier; there is likewise a person of the name of Glover; and there is Tomlins. And this is the only fact of barbarity to which Tomlins is called to de-
pose:

pose: She speaks to all other circumstances of Mr. Evans's behaviour towards his wife with the utmost partiality. As to Bobillier's testimony, I have already expressed myself in pretty strong terms of the opinion which I entertain of the truth of any assertion which comes from that witness; and therefore certainly, in weighing this business, I shall pretty much lay her out of the question. I will only just observe upon one circumstance, which shews pretty clearly the degree of alloy with which her evidence must be considered as debased. She describes herself as *coming into the room at midnight, and finding Mrs. Evans in the situation stated in the libel*, and to which she speaks very fully. She then says, that *after Mr. Evans had retired, and with great unconcern*, [certainly a very odd appearance for a man to assume, taking the story to be real] *she staid with Mrs. Evans till two o'clock in the morning, when Mrs. Evans recovered from her state of insensibility.* (So that this poor lady, according to Bobillier, had been lying in this deplorable state from midnight till two in the morning, and then awaked, to give an account of what had happened to her!)

Now it is positively sworn by Tomlins, that *the lady was actually restored, and that she herself had taken Mr. Evans's night cloaths into another room; that she was afterwards called in by Mademoiselle Bobillier, and was ordered to deliver a letter, which was written to be sent to Mr. Thackeray, AT ONE IN THE MORNING!* and it does so happen, that Mr. Thackeray himself deposes, that *this letter bore date at one.* Yet this witness, in order to augment this transaction, pretends to

state, that it was not till *after two* that Mrs. Evans awoke, and that consequently it must have been after two that that conversation took place between her and Mrs. Evans, which produced the writing and the sending of this letter. However [the account given lies between Glover and Tomlins ; and the account that they give, in substance amounts pretty nearly to this :—That Mrs. Evans was found certainly in a situation of apparent distress ; what produced that distress *non constat* ; for every thing had passed in the room between Mr. Evans and herself before any body was admitted. One witness says, that *her mouth was full of blood*. The other witness says, that *she saw nothing of blood*. The account given of what had passed *in recenti facto*, is given to me simply upon the credit of the French lady ; and I am decidedly of opinion to take no fact upon the credit of that witness alone. I am then not ascertained, by that witness's singly telling me so, that Mrs. Evans did at that time give this account.—That there had been something of a struggle, in the course of which Mrs. Evans fell out of bed, or threw herself out of bed, or was thrown out of bed by Mr. Evans, these are the three possibilities which might have happened. But, supposing I got at it as a fact, that *she* was actually shoved out of bed by Mr. Evans, I must still go farther, in order to establish a case of cruelty ; for I must go to the extent, that this was done intentionally, and not by accident. Both the fact and the intention must be proved, to make it a case of cruelty ; I certainly shall not presume circumstances in order to make out such a case.

It

It has been asked, and very properly asked, Don't courts of justice admit presumptive proof? Do you expect ocular proof in all cases?—I take the rule to be this—If you have a criminal fact ascertained, you may then take presumptive proof to shew who did it;—to fix the criminal, having then an actual *corpus delicti*. Shew me, then, in this case, that a crime has been committed, and I shall not be at a loss to fix the criminal: but to take presumptions in order to swell an equivocal fact, a fact that is absolutely ambiguous in its own nature, into a criminal fact, is a mode of proceeding of a very different nature; and would, I take it, be an entire misapplication of the doctrine of presumptions. This fact, then, not being a criminal one upon the face of it; and being subject to three or four different interpretations, all of which are perfectly innocent, I think myself by no means at liberty to say, that I ought, by presumption merely, to make out this fact to be necessarily an act of delinquency.

However, what weighs more with me than all this, again, is, what I perpetually resort to in this case, viz. the *evidentia rei*; the conduct of the parties: that always arises in my mind. Upon any other supposition than Mr. Evans's innocence in this case, the conduct of every person who appears in the business; the conduct of the party; of the witness; of the agent; in short, the conduct of every body, is the most unnatural that can be devised; it is directly the contrary of what every rational person in that sort of situation would have pursued. Whoever reads the

the description in the libel, and then recollects the extreme bodily weakness of the person who was racked and tormented, and in this variety of almost inexplicable ways (as they have been well stated to be) must suppose, that she must have continued, for many days afterwards, in a very languishing state, and in a situation of great personal hazard; that her body must not only have been greatly bruised, but must wonder that it did not appear entirely dislocated the next day. Now, where are the medical persons in this case? Was no assistance of that kind invoked? Surely Mr. Evans could not have prevented the interposition of aid of that nature, because the matter was immediately communicated, and consequently assistance, if necessary, must have been called in. Mr. Thackeray, to whom a letter had been sent [Here again I see the finger of this busy incendiary, this Mademoiselle Bobillier] Mr. Thackeray, like an affectionate brother, comes at the first call.—There is some difference in the account of the witnesses as to the time when he came. Bobillier says, it *was between the hours of nine and ten.* Mrs. Evans comes down to Mr. Thackeray—one would suppose that she came in a situation of great visible peril—there is nothing of that sort, as far as I see. He enquires what was the matter—She declines at first telling him—Then Mr. Evans takes up the matter, and begins to tell it—She stops him short, and gives the history of it herself; and the only particulars which stick upon the mind of this gentleman; a man of sense, and of strong attention to the cause of his sister-in-law—the only particulars which stick upon his recollection, and which he states to me, are, that *Mr. Evans*

had hurt her with his elbows, and violently shoved her out of bed. Now, I ask, is this account consistent with the variety of tortures that were applied to this poor lady, who was racked in the way that she is stated to have been in the libel? Is it possible that these two circumstances, and these two circumstances alone, should, in such a case, remain upon the mind of this gentleman?—It is most highly incredible.

But the matter does not rest there. The consequences, whatever they may have been, were not in the slightest degree visible. Witnesses have been examined to them: there is particularly Jeffop, who swears, that *he saw her at dinner the next day, just as usual.* Fraser *saw her at dinner the next day, just as usual.* In short, she appears, upon a reconciliation which then took place with her husband, to have appeared just in her usual guise, without any alteration of body or mind. And when I have the total silence of all the persons who must have been able to speak to the fact, if it had existed as a matter of any consequence at all, I cannot help giving the whole business up, as a matter absolutely without weight or any significance whatever.

In the conversation which then took place, Mr. Thackerey was convinced that a separation was necessary; and then, as far as I can conjecture, was convinced of it for the first time. He accordingly proposed it. Mr. Evans was urgent for it. Mrs. Evans was violently averse to it.—Now from thence I collect three things.

First

First of all, that Mr. Thackeray never could have heard of the previous brutality which had been charged upon Mr. Evans; because if he had, there could have been no question but that he would have had that conviction in his mind long before.

The *second* that I collect is, that if Mrs. Evans had sustained these horrid outrages, it is most extremely unnatural, that she should herself have been averse to a separation; the mere love of life would have induced her to desire it.—The gentlemen say, and say very truly, that it is very hard that this should be pressed to the disadvantage of Mrs. Evans's character, that she was willing to continue with her husband; and so it would be: but it is not pressed to the disadvantage of her character; it is pressed only to the disadvantage of the truth of her case. Yes; but it is next said, *It was the love of her children.* Clear it is to me, from a fact which I shall afterwards mention, that it was not the desire of continuing with her children that operated in her mind, as a motive to make her feel a repugnance to the separation proposed.

Mrs. Evans's counsel have made very strong appeals to the humanity of the court, and have said, what a prodigious cruelty I should commit, if I were to send this lady back again to this gentleman, after such cruel usage. There would be some colour for that, if I did not find that this lady herself, after almost every thing which they have stated to the disadvantage of this gentleman had passed,

nevertheless remained firm in her attachment, and remained extremely desirous of continuing the cohabitation.

In the *third* place, it seems to me highly unnatural, that Mr. Evans, if I am to consider him as a person labouring under the conviction of this deep and detected guilt; it appears, I say, extremely unnatural that he should be the party to assume the tone of complaint, of disaffection and dissatisfaction; and should be the person to clamour for a separation.—As to his declining to state his grievances to Mr. Thackeray, I own I see many reasons why he might decline doing it, without any impeachment either of his own innocence, or of the honor of the gentleman whose jurisdiction upon that occasion he thought fit to decline. If a man has a dispute with his wife, which turns upon facts that are in controversy between the two, I do not think the relations of the wife are the proper tribunal before whom the husband is bound to answer.

This quarrel however was made up, yet it was but *gratia malefarta*; for, after cohabiting together for some time longer, their harmony is again interrupted by an act, or an accident, which happened at the latter end of November. It is related by Mrs. Newland and by Mrs. Webber. For as to Bobillier, I say again that no credit is due to her.

It is, as pleaded in the libel, to this effect:—That *at the latter end of November, or beginning of December, Mrs. Evans being*

being in the drawing-room of their house in Conduit Street, in company with two ladies and her eldest daughter, Mr. Evans came into the room and seated himself on a sofa, and asked her what book she was reading? that thereupon she immediately went to him with great good-humour, and, by way of answering his question, continued to read aloud a part of the book which she had before been reading; upon which he pulled her on his knee, where she sat some short time, when he, without any cause or provocation whatever, in great passion, suddenly and violently, and with his greatest force, threw her from him on the hearth-stone, and thereby greatly hurt and bruised her.

Now, the account given by the two witnesses whom I particularly point out in this case, Mrs. Newland, a sister of Mr. Evans, and Mrs. Webber, who is a particular friend of Mrs. Evans, is this:—

Mrs. Newland does not depose at all as to the fact of throwing down, for she did not see it. All that she saw was, that Mrs. Evans came and sat upon his knee; that he complained of the interruption of something that he was reading: and the next thing she saw was, this lady rolling upon the hearth. So that her evidence, taking the whole of it, cannot affect Mr. Evans. Well, but it is said, from her account it nevertheless appears, that, immediately upon the occasion, Mrs. Evans brought home the charge to Mr. Evans; for, as Mrs. Newland deposes, on his offering to assist her up, she said, “*You brute, let me alone.*”

alone." Mrs. Webber says, that Mrs. Evans expostulated with him in a mild manner, when he offered to assist her; but the manner is this, "*You brute, let me alone.*" And *she then rolled from him, and got up without assistance.*

Now, taking it that Mrs. Evans did suppose at this time, that it was the intentional act of Mr. Evans, still her supposition is not sufficient for the court to raise an evidence of actual intention upon it. Mrs. Evans, prone to take offence, might perhaps ignorantly ascribe that to design which was the mere effect of accident. To take that, then, for the true representation of the fact, upon the single ground of her supposing it so, would, I think, be going a very dangerous and unreasonable length of admission indeed.

But, what is the account Mrs. Webber gives of this business? She speaks very imperfectly to a great deal of what passed. She admits her hearing not to be very good. She says, however, *she saw Mr. Evans lift up his knee, as she could plainly discern, and Mrs. Evans then fell down upon the hearth before the fire, near to which Mr. Evans was sitting; on which the deponent, who was very much frightened, screamed out, and said, Good God, Sir, how could you do so? or, how could you be so cruel?*

Now, in the first place, supposing the fact that this lady did actually see what she says she did see; is it at all a necessary conclusion, or what have I to satisfy me, that

this small motion on the part of Mr. Evans, which possibly might have been made with an intention to dislodge his wife from her seat, was yet done with the intention of producing the consequence which it produced, namely, that of tumbling her down upon the hearth and hurting her considerably? She comes and seats herself upon his knee. She enters into a conversation with him. A husband is not always in a disposition to converse with his wife. She upon that occasion continues there. He makes a motion to dislodge her from her position, and this consequence happens, that she falls upon the hearth. He immediately, as it appears, attempts to give assistance, which she repulses in the way that Mrs. Newland says, "*You brute, let me alone.*" The other witness, Mrs. Webber, says, that she upon the occasion exclaimed, *Good God, Sir, how could you do so?* to which he answers, *He did not intend it*; which answer this lady chuses to call an *equivocal* answer, but which appears to me as *direct* an answer as could be given. Is there any thing like an *equivocation*, or *ambiguity*, in that answer?—Taking the utmost of the fact, then, upon the evidence of these two witnesses compounded together (for, as to weighing minute circumstances, there is no end of it) there might be perhaps a little want of caution, a want of some little attention at the time, just at the moment of removing this lady from his knee: but that there was an intention of cruelty; that there was an intention that this lady should be affected by the slight motion, to which perhaps he involuntarily had

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at that time recourse; I have nothing in the world that applies to my mind, with any degree of force whatever, to satisfy me that it was so.

But, what was the effect of this fall? And here again I resort, as I must do from beginning to end, to the conduct of the parties—That is the key by which, I think, every thing here is to be unlocked. Why, Mrs. Evans had been, it seems, reading a novel for the entertainment of the company—This accident, as tragical as almost any that happens in a novel, happens at this time; and what is the consequence of it? What is the impression it makes upon the mind of Mrs. Webber herself at the time? Why, having given a detailed account of this cruel transaction, she goes on to say, that *she remembers she regretted much the entertainment that she had lost by the discontinuance of the reading of the novel.* That is her impression. The lady sees an act of horrid barbarity performed, and what is uppermost in her mind is, the loss of the reading of this novel, which had been the entertainment of the evening. However, it did happen that she was not even deprived of this entertainment, because she goes on to say, *that Mr. Evans staid in the room, and he read the novel.* Then I have this fact, that, after an act so brutal as this was, these ladies not only continued in the room with the monster, who had been guilty of it; but submitted to receive from him the entertainment, which they had been prevented, by his behaviour to Mrs. Evans, from receiving

from her. I do think, then, that the coming afterwards and representing such a matter as this with any degree of gravity, is absurd and ridiculous in the highest degree.

It must also be observed, that Mrs. Evans herself came down that night after supper; and it has been made a proof of great barbarity on the part of Mr. Evans, that he observed to a gentleman who supped there that night, *that the poor thing was not very well*. Now, that depends entirely upon the manner of saying it, whether it is to be taken as an expression of insult or of condolence; of the condolence of a very affectionate husband, sorry perhaps that he had not practised all the care and attention, in that matter, which an affectionate husband might have wished to have done. He might then have very well said, *The poor thing was not very well*. But that it was done with any intention to insult her feelings—to be sure, the manner in which this Mrs. Webber has depos'd to her own feelings on the occasion, abundantly satisfies me that it could not be done with any such intention.

Now, here concludes the history of personal cruelty, so far as it consists in personal and corporal acts. An history very heavy and formidable in its commencement, whilst it rests in mere *allegation*; but which grows weaker and more insignificant every step as it advances towards *proof*. Comparing the charge and the proof, I think it, then, my duty to discharge that debt which the justice of this court owes to the character of Mr. Evans, by declaring, that,

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upon the most careful and the most conscientious investigation of it, this prosecution, so far as it respects these facts, is unadvisedly and unwarrantably brought. I therefore fully exculpate him from that charge of unmanly cruelty, which is founded upon these facts; and I do very sincerely regret, that, under any advice, this poor lady should have preferred so black an accusation against her husband, and one so totally destitute of all reasonable colour.

On the 23d of December, Mr. Evans took the resolution of finally separating from his wife. It is pleaded in the fourteenth article of the libel, that *he did arbitrarily, and without any cause or provocation whatever, deprive his wife of all government in his family, and authority over his servants; and that he did, on or about the 23d of December 1788, finally withdraw from her, and without cause.*

Now, from stating the deprivation of authority first, and the separation afterwards, one would suppose that he had deprived this lady of authority in his house, before he quitted it himself; and to that effect, Tomlins positively swears; viz. that *some time about the fourth of October, he gave her orders not to obey Mrs. Evans, but to obey other persons*, who are there mentioned. This, however, is erroneously and carelessly stated; because it is most positively contradicted by all the other servants who are examined—Odell, Fraser, Glover, Jeffop; all of whom are examined upon the thirteenth article, and who say, that this deprivation of authority did not take place while Mr.

Evans continued in a state of cohabitation with her. However, there is a fact which comes out upon the evidence of Odell, and it is this ; that Mr. Evans had taken into his own hands something of the department of the house œconomy : I don't think it very clearly appears what—It is upon the third interrogatory, to which she answers, that *Mrs. Evans declined giving orders, when the respondent applied to her, soon after her first going to live in her service (which was, I think, upon the first day of November) and told her to go to her master ; that she would not take the management of the house ; that, as Mr. Evans did part by might do the whole : and she could not then settle her bills ; in consequence of which, he took the management of all his household concerns ; and, on a new servant coming, the respondent told Mrs. Evans of the servant's coming to be hired ; but she would have nothing to do with it, on which Mr. Evans hired her ; and he did not, to her knowledge, refuse to permit her to hire a maid-servant, or to do any other domestic office of that or the like nature.*

The counsel have taken up this quarrel pretty strongly in behalf of Mrs. Evans, and have inveighed very loudly against the barbarity of a husband, for taking into his own hands any part of the family œconomy ; but, in my apprehension, a good deal without reason. I cannot call it cruelty, if a gentleman chuses to settle his weekly bills himself ; because, I take it, that a wife acts in this respect not by any original right, but as the steward and as the representative of her husband. And if a man has but a

moderate opinion of his wife's management, and is vain enough to have a better of his own, why, if he does chuse to take into his own hands the payment of the weekly bills, I protest it does appear to me to be that kind of conduct with which no magistrate, ecclesiastical or civil, has any right to interfere. I say, I see nothing in that; but I do see, here again, on the other side, a proneness to take offence; a disposition to revolt; a disposition to return a supposed insult by something very like disobedience.

On the 23d of December, Mr. Evans took the resolution of finally separating from his wife. There had been for a time growing dissensions, which had frequently ripened into proposals for a separation; and these proposals, which had always come from Mr. Evans, had been withdrawn upon the interference of friends, and the parties had become half reconciled.

In September 1788, he had very abruptly quitted Mr. Thackeray's, where he had been upon a visit with his wife; and he proposed a separation in a letter, the contents of which are stated, in a great measure, by Mr. Thackeray. Now, there could have been no fact of cruelty at that particular time, which gave occasion to the desire of a separation; because Mr. Thackeray swears that *he does not know the occasion of this quarrel*, though it clearly happened at his own house. It could, then, have been no more than mere private disagreement. In the separation proposed was this circumstance, that *he had acceded to her having*

having the charge of the children. After this, I can never, surely, admit it to be said, that the reason why this lady chose to remain with her husband was, *an apprehension that she might be debarred of the comfort of her children*; because, the terms of the separation then proposed were, *that she should have the charge of the children.* Mr. Thackeray, very prudently anxious for a reconciliation, as I think he was (supposing him ignorant of all these atrocious facts of cruelty) he, after all this, wrote a letter to Mr. Evans—stating what? Why, stating *Mrs. Evans's uneasiness, and her anxiety for a reconciliation*; though she was then either in possession of the children, or at least had the possession of them absolutely secured to her. It is impossible, then, for me to suppose one moment, after this, that her anxiety for a reconciliation proceeded from any thing else than an attachment to her husband.

Mr. Thackeray says, he requested a meeting; Mr. Evans declined it, but desired the means of meeting a third person, after Mrs. Evans had agreed upon a separation. I see nothing that is at all particular in that. It seems to me a proper caution on his part, that he should have desired to have his family controversy submitted rather to the judgment of a third person, than to the judgment of a person, who, though a very honorable man, was yet, it is to be remembered, the brother-in-law of Mrs. Evans. However, a reconciliation was effected at this time, and the parties lived together again until October the 4th, when the accident happened which I have before described.

Then

Then again Mr. Evans insists, as he always does, upon a separation. He is the party always insisting upon that. Mr. Thackeray, for the first time, then yields to the necessity of the case; though he clearly yields with a good deal of reluctance. However, by the good offices of Mr. Henniker, they are again half reconciled.

On the 23d of December, Mr. Evans withdraws himself totally, taking with him the person of his eldest daughter; and offers to Mrs. Evans, in a letter, which has my notice because it has been noticed by the counsel on both sides, a settlement of £. 500 a year. The letter, tho' written in the height of irritation, does not insinuate that species of misconduct with which she has been improperly charged in his allegation: it only charges her with intolerable manners.

Now, here, I think, that an impropriety, for the first time, attaches on the conduct of Mr. Evans; for Mr. Evans must be informed, that the law of this country, and of every Christian country, does not allow a man to use the language, "*I will be separated from my wife.*"—If Mrs. Evans had been guilty of any misconduct for which the law would decree a separation, he would be perfectly right in withdrawing himself; but, in all cases where the law does not pretty positively allow, it pretty positively, I believe, condemns.

Marriage is the most solemn engagement which one human being can contract with another. It is a contract formed

formed with a view, not only to the benefit of the parties themselves, but to the benefit of third parties; to the benefit of their common offspring, and to the moral order of civil society. To this contract is superadded the sanctity of a religious vow, to which Heaven itself is made a party. Mr. Evans must be told, that the obligations of this contract are not to be relaxed at the pleasure of one party. I may go farther; they are not to be lightly relaxed even at the pleasure of both. For, if two persons have pledged themselves, at the altar of God, to spend their lives together, for purposes that reach much beyond themselves; it is a doctrine to which the morality of the law gives no countenance, that they may, by private contract, dissolve the bands of this solemn tie, and throw themselves upon society, in the undefined and dangerous characters of a wife without a husband, and a husband without a wife.

There are, undoubtedly, cases for which a separation is provided; but it must be lawfully decreed by public authority, and for reasons which the public wisdom approves. Mere turbulence of temper; petulance of manners; infirmity of body or mind, are not numbered amongst those causes. When they occur, their effects are to be subdued by management, if possible, or submitted to with patience; for the engagement was *to take for better, for worse*: and, painful as the performance of this duty may be; painful as it certainly is in many instances, which exhibit a great deal of the misery that clouds human life, it must be attempted to be sweetened by the consciousness of its being

ing a duty, and a duty of the very first class and importance.

Mr. Evans, in determining to quit his wife, does that which the law does not approve, and for which it provides a remedy. But the remedy is certainly not that which is sought for in the present suit; the remedy is the *remedy of restitution*. It would be absurd to suppose that the law which furnishes that remedy, furnished at the same time another remedy which is totally the reverse of it, and totally inconsistent with it. To say that the court is to grant a separation, because the husband has thought fit to separate himself, would be to confirm the desertion, and to gratify the deserter; and the court would then become the perpetual instrument of these voluntary and illegal separations.

I can never, therefore, make desertion a ground of separation, though, in conjunction with acts of cruelty, it frequently is; and, though it may be thought hard to send a wife back to a husband who has given her such a proof of alienated affections; yet the court does not send her back without due care for her reception: for the monition is, not only *that he shall take her back*, but *that he shall treat her with conjugal kindness*; and, though the court cannot interfere in the minute detail of family life (for much must ever be left to the consciences of individuals) yet the court will see its monitions so far obeyed, that the great obligations of conjugal duty shall be complied with.

What

What I have to say upon the remaining part of this case will be comparatively short, because every thing that follows in this history arises out of this act of separation; and I have already said, that this suit is not the proper remedy for a complaint for separation. The true remedy cannot be obtained by this suit; for, it is a mistake to say, as it has been said on this occasion, that, in the present suit, I can issue a monition to either party to return. This suit can lead to no such sentence.

Mr. Evans quits his wife, and, in that respect, does an improper thing; that improper step is followed by others of the same nature; for there is no such thing (one has often occasion to observe it) as doing an improper thing with strict propriety. He is charged with having denied to his wife access to her child. If the fact were true, though he certainly might do it, yet I should deem it a most improper exercise of the marital power, very disgraceful to the person who practised it, and a most wanton and unnecessary outrage upon the feelings of a mother. But the evidence, as far as it goes, does not, in my apprehension, support the imputation. In his letter he expressly engages that access shall not be denied. Mr. Henniker, who carried that letter, knowing its contents, is to be considered as guarantee of that engagement. As to the letter mentioned by Bobillier, of a contrary effect, I take that to be one of the many fictions with which that lady has thought fit to adorn her evidence. And as to the taking her away to a boarding-school, though I do wish it had been

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done with less privacy, and less precipitation, as that would certainly have been more prudent; yet the placing of the child in a place of education, does by no means prove that he meant to debar her the sight and access of her mother; and therefore I do not hold that fact to be proved in this case.

When Mr. Evans quits his wife, he withdraws not, as is insinuated in the libel, a proper contribution to the support of his wife; but he does withdraw, I think, a proper mode of making that contribution. He commissions his agent, Mr. Jackson, in conjunction with Mr. Evans senior, to furnish all necessaries for Mrs. Evans and the family; he offers £. 500 a year separate maintenance; and this furnishing of necessaries was, as I understand Mr. Jackson, merely provisional till some settlement was actually made. He leaves directions with the servants, of which a copy is exhibited, certainly drawn in terms sufficiently peremptory, in which he refers those servants, for all orders, to Miss Evans. Now this is, certainly, a situation of dependence and indiginity in which Mrs. Evans is placed. It is putting her, for the supply of her necessities, into the hands of his fister and his solicitor. But then, I must remember the fact, that Odell says, that at this time Mrs. Evans had abdicated the government of the family, in consequence of the offence which she had taken at some conduct of Mr. Evans. She had refused to carry on the family business. Somebody must take care of the house. If Mrs. Evans would not undertake it, perhaps Miss Evans was as proper as any body else.

else. To be sure, if Mrs. Evans had at this time signified her desire to act as mistress of the house; if she had remonstrated at this moment against this entire transfer of domestic authority, there would have been ground of complaint; but I think Mr. Evans, under the circumstances, had no reason to presume, that she would have done that under a state of separation, which she had refused to do, living in conjunction with him. Though I think it is a degradation under which she ought not to remain; yet I cannot help thinking that she has herself very largely contributed to place herself upon that footing.

It is charged, in the next place, that he deprived her of all pecuniary credit. I should be unwilling to remark, that, if proper supplies were furnished by the attention of Mr. Evans senior, and Mr. Jackson, credit was not absolutely necessary. However, the proof of the fact is this; that Sir Herbert Mackworth, his banker, and Mr. Boehm, were forbid to furnish her with money (as proved by Mr. Moore) without his written order. Now, I protest that I have never understood it to be a part of the prerogative of a wife, that she shall have a right to draw for what she likes upon the banker of her husband. The purse is her husband's; and it seems to me a matter of indifference, in its own nature, whether the supplies pass through the hands of Sir Herbert Mackworth, or Mr. Jackson and Mr. Evans. It is necessary, undoubtedly, to supply her with money; but the mode of doing it by a banker, I suppose, is not absolutely necessary: I do not take it to be perfectly usual.

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He had indulged her before with an unlimited liberty of this kind, which, upon the separation, it is proved he withdrew. That under the present circumstances he should not leave her an unlimited power of drawing upon his banker, nobody could wonder. And as far as £.500 a year went, he professed (and gave every evidence of sincerity in those professions) that he was ready to leave her that power. No proof, here again, is offered that Mrs. Evans ever requested any money of him. If a husband, upon request, refuses to furnish necessaries, either by himself, or his agent, undoubtedly he is culpable; but, if a wife does not think fit to make any request or demand, it is going too far to fix upon a husband cruelty, merely because he refuses one particular mode of supplying her with money, and which mode he was never bound, under any circumstances, to practise; but which in the present case, as far as it appears, he has never even been requested to conform to. The fact is, that, finding her credit stopped at the banker's, she trusted (as well she might) to the kindness and liberality of her relations; and, without making any application to her husband, as I see, avails herself, not very advisedly, of this as a circumstance on which to found a charge of cruelty

He is charged, in the next place, with refusing her the aid of medicine, and that, with that view, he sent Mr. Jackson, his attorney, to Mr. Paumier, to forbid him supplying her with medicines. They have both been examined, and they differ in their evidence. Mr. Paumier says,

says, he received orders from Mr. Jackson. Mr. Jackson swears, he accidentally met Mr. Paumier, who asked if he was to attend her on Mr. Evans's account; that he declined giving any directions, as she had left the house; that he never forbid any person from giving her credit, nor was ever sent for that purpose by Mr. Evans; nor did he, nor did Mr. Evans ever, to his knowledge, forbid any person from giving her credit. Then, I am either to suppose that Mr. Paumier misunderstood Mr. Jackson, which might easily be, or, that Mr. Jackson delivered those orders of his own head; for, he does positively swear that he was never sent with any such orders from Mr. Evans; and, in order to affect Mr. Evans with this fact, he must be the orderer. Supposing it to be fixed upon Mr. Evans, it might still remain, I think, for consideration, how far the discharging of Mr. Paumier, who, for any thing that appears, was not particularly desired by this lady to attend her; how far the discharging of him merely from the obligation of attending on Mr. Evans's account, is to be deemed an act of cruelty; more particularly where the husband knew (as he could not but know) that she was under circumstances, where she was sure to receive every assistance of that kind from her relations. I do think, to call this a refusal of all necessary medical aid to a person who was ill, does seem to me to be putting upon such a business no very fair colour.

That a woman, under such circumstances as she now was placed, should not chuse to continue any longer in the house, is not to be wondered at. It was certainly a state of indignity.

indignity. But, Mr. Jackson positively swears, that *he offered no violence; that he threatened none; that he was not authorized to do either the one or the other; and that it was a matter of considerable surprize to him when she quitted the house.* To me however, I own, it would have been a matter of surprize, if she had continued there, considering the footing upon which she then was. Mrs. Thackeray swears, that *she saw two or three letters from Mr. Jackson, intimating that Mrs. Evans must quit the house, or he would take steps that would be disagreeable.* Now, taking it that Mr. Evans meant to have two houses, two separate establishments; to have an establishment necessary for the wife; to be sure a less house would be sufficient for her in consequence of this separation; and no just cause of complaint could arise, unless the house to which she was desired to withdraw was such an one as it was improper for the wife of Mr. Evans to inhabit; for, I cannot but say, that a husband has a right to direct the removal of his own family.

There is another matter, which has been made a pretty long subject of discussion in this case; a matter of trunks and boxes, which has been introduced into the allegation, but not into the libel. One representation is given of it by Mr. Jackson; another by Mademoiselle Bobillier: and I think I do not pay any one individual any sort of compliment, when I say, that I shall take his deposition in preference to her's.

After all, there are, certainly, circumstances sufficiently hostile attending this separation. I wish it had been conducted

ducted with more care; with more caution; with more tenderness, on the part of Mr. Evans; for care, caution, and tenderness, would have been prudence. I must however remember, that there were at this time declared hostilities subsisting; great mutual exasperation. It was now become a contest of etiquette, of honour and spirit, on both sides. Nothing can be more clear to me, than that the husband meant to support his wife with sufficient liberality; he had always done it; for want of liberality is no where in the cause to be found imputable to him. However, the parties agreeing in substance, they disagree in terms; they disagree only in the nature of the security that was to be given for the allowance proposed. It is not my business to drop an opinion upon that subject; for, after what I have said, it will be sufficiently clear that it is not the business of this court to approve at all of such separations. But, if I could with propriety for one moment abstract myself from the public situation which I am now in, and could stand in the situation of a private individual, and as the adviser of Mr. Evans, I should say, that the generous part would be the prudent part in such a business; and that a conduct of that nature would be that conduct, under all the circumstances, which it was most adviseable to adopt:—however, with that I have nothing to do. The spirits of the parties are mutually irritated against each other; the treaty goes off upon that ground; and the refusal to adopt a particular mode of securing the allowance is to be construed a denial of all necessary support, and to be made the foundation of an accusation of cruelty.

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The truth of the case, according to the impression which the whole of it makes upon my mind, is this:—Two persons marry together; both of good moral characters, but with something of warmth, and sensibility, in each of their tempers; the husband is occasionally inattentive; the wife has a vivacity that sometimes displeases, that sometimes offends and sometimes is offended; something like unkindness is produced, and is then easily inflamed; the lady broods over petty resentments; which are anxiously fed by the busy whispers of humble confidantes; her complaints, aggravated by their reports, are carried to her relations, and meet with something like a facility of reception from their honest, but well-intentioned, minds. A state of mutual irritation increases; something like incivility is continually practising; and, where it is not practised, it is continually suspected; every word, every act, every look, has a meaning attached to it; it becomes a contest of spirit, in form, between two persons eager to take, and not absolutely backward to give, mutual offence; at last the husband breaks up the family connection, and breaks it up with circumstances sufficiently expressive of disgust: treaties are attempted, and they miscarry, as they might be expected to do, in the hands of persons strongly disaffected towards each other; and then, for the very first time, as Dr. Arnold has observed, a suit of cruelty is thought of; a libel is given in, black with criminating matter; recrimination comes from the other side; accusations rain heavy and thick on all sides, till all is involved in gloom, and the parties lose total sight of each other's real character, and of the

the truth of every one fact which is involved in the cause.

Out of this state of darkness and error it will not be easy for them to find their way. It were much to be wished that they could find it back again to domestic peace and happiness. Mr. Evans has received a complete vindication of his character. Standing upon that ground, I trust he will act prudently and generously; for generosity is prudence in such circumstances. He will do well to remember, that the person he contends with is one over whom victory is painful; that she is one to whom he is bound by every tie that can fasten the heart of one human being to another; she is the partner of his bed!—the mother of his offspring! And, if mistakes have been committed (and grievous mistakes have been committed, most certainly, in this suit) she is still that person whose mistakes he is bound to cover, not only from his own notice, but, as far as he can, from that of every other person in the world.

Mrs. Evans has likewise something to forget; mistakes have been made to her disadvantage too in this business: she, I say, has something to forget. And I hope she has not to learn, that the dignity of a wife cannot be violated by submission to a husband.

It would be happy indeed, if, by a mutual sacrifice of resentments, peace could possibly be re-established. It requires, indeed, great efforts of generosity, great exertions of

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prudence, on their own part, and on the part of those who are connected with them. If this cannot be done; if the breach is too far widened ever to be closed, Mrs. Evans must find her way to relief; for, she must not continue upon her present footing, no not for a moment: she must call in the intervention of prudent and respectable friends; and, if that is ineffectual, she must apply to the court, under the guidance of her counsel, or other persons by whom the matrimonial law of this kingdom is understood.

But, in taking this review, I rather digress from my province in giving advice: my province is merely to give judgment; to pronounce upon what I take to be the result of the facts laid before me. Considering, then, all those facts, with the most conscientious care, and with the most conscientious application of my understanding to their result, I am of opinion, that Mr. Evans is exculpated from the charge of unmanly and unlawful cruelty. I therefore pronounce, *that Mrs. Evans has failed in the proof of her libel, and dismiss Mr. Evans from all further observance of justice in this behalf.*

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